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REGISTRATION CASES.

REPORTS OF CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

ON

APPEAL FROM THE DECISIONS OF THE REVISING BARRISTERS,

From Michaelmas Term, 1868, to Trinity Term, 1872.

BY

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BARRISTERS-AT-LAW.

VOLUME I.

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1873.

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TABLE

OF THE

CASES REPORTED IN THIS VOLUME.

ERRATA.

Page 13, line 9, from the bottom, instead of "In all these classes," *read* "In the first two classes."

Page 52, line 17 from top, for "sect. 24," *read* "sect. 20."

Page 65, line 5 from the bottom, for "immaterial," *read* "ministerial."

Page 230, line 3 from the bottom, between "it" and "Clayton's" *insert* "]."

Page 625, line 5, *read* "place of abode had been inserted in the notice of objection."

„ line 6, *dele* "In the notice of objection."

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

MICHAELMAS TERM, 1868,

AND

HILARY AND EASTER TERMS, 1869,

IN THE

THIRTY-SECOND YEAR OF QUEEN VICTORIA.

CHORLTON, Appellant; LINGS, Respondent.

1868.

Nov. 7, 9.

Women are subject to legal incapacity to vote at the election of representatives to Parliament. They are, therefore, within the exceptions contained in 30 & 31 *Vict.* c. 102, sects. 3 and 4, and are not enfranchised by that Act. If this were not so, yet the terms of 2 *Will.* 4, c. 45, forbid the application of the interpretation of stat. Act 13 *Vict.* c. 21, sect. 4, to the 30 & 31 *Vict.* c. 102, so that the word "man" does not include woman.

THIS was a consolidated appeal from a decision of the Revising Barrister for the city of *Manchester*. The case stated that—

At a Court held at the *Town Hall*, in the city of *Manchester*, on the 15th of *September*, 1868, for the revision of the list of voters for members of Parliament, in the Parliamentary borough of *Manchester*, *Mary Abbott* appearing on the list published by the overseers,

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of claimants to vote in the township of *Manchester*, was duly objected to by *Matthew Chadwick*, a person on the list of voters for the said Parliamentary borough.

The name of the said *Mary Abbott* appeared upon the list of claimants in the following manner:—

Abbott, Mary	51, *Edward Street*	House	51, *Edward Street*

It was admitted that the said *Mary Abbott* was a woman of the age of twenty-one years and unmarried, and that she had for twelve months previously to the last day of *July*, 1868, occupied a dwelling-house stated in the said claim within the said township, and had been duly rated by the said overseers in her own name for such occupation, and that she had paid the rates for the relief of the poor assessed in respect of such dwelling-house before the 20th of *July* last, and in other respects had complied with the requirements of the Registration Acts.

On behalf of the claimant it was contended that under the existing statutes the claimant was duly qualified and entitled to be registered as a voter, and, when registered, to vote in the election of a member of Parliament, and that women, for the purpose of being registered electors and voting in election of members of Parliament, were not subject to any legal incapacity.

It was maintained, on the part of the objector, that under the existing statutes the claimant was disqualified on account of her sex.

The Revising Barrister held, that *Mary Abbott*, being a woman, was not entitled to be placed on the register, and her name was erased from the said list of claimants.

There were also struck out of the list the names of 5,346 women, whose names and qualifications were set forth in the schedule to the case, and as the validity of their claims depended on the same point of law as that raised in the case of *Mary Abbott*, the appeals were consolidated.

If the Court were of opinion that the said *Mary Abbott* was not entitled to have her name inserted in the list of voters for the said borough of *Manchester*, then such names, the names referred to and set forth in the schedule above mentioned, were to remain erased; but if the Court were of opinion that the said *Mary Abbott* was entitled to have her name inserted in the said list of voters, then her name, and the said names referred to and set forth in the schedule, were to be restored.

J. D. Coleridge, Q. C. (*Pankhurst* with him), for the appellants.

It can be shown that women in ancient times voted of right and by law, and that no Act has been passed by the Legislature to take away the right. If this be so, it is submitted that such a right can not have been lost by non-user. Originally men possessing a certain qualification were entitled to vote for members of Parliament. It appears that women similarly qualified had also the electoral franchise. If, then, the same qualification and circumstances concur in the case of women as confer the right on men, it will go far to show that the former are still entitled.

Though this is a case respecting the right to vote in boroughs, if it can be proved that the objection in respect of sex did not apply to a voter for the county, that would greatly assist the argument that it ought not to prevail

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in the case of boroughs, though the evidence of the existence of a woman's right in these last be not so strong or clear as in the case of the county franchise.

7 *Hen.* 4, c. 15. *Item*,—"Our Lord the King, at the grievous complaint of his Commons in this present Parliament, of the undue election of the knights of counties for the Parliament which be sometimes made of affection of sheriffs, and otherwise against the form of the writs directed to the sheriff, to the great slander of the counties and hindrance of the commonalty of the said county, . . . hath ORDAINED and established, That from henceforth the elections of such knights shall be made in the form as followeth: that is to say, at the next County (*a*) to be holden after the delivery of the writ of the Parliament, proclamation shall be made in the full county of the day and place of the Parliament, and that *all they that be there present, as well suitors duly summoned for the same cause as others*, shall attend to the election of the knights for the Parliament, and then in the full county they shall proceed to the election freely and indifferently. . . . The names of the persons so chosen (be they present or absent) shall be written on an indenture, *under the seals of all them that did choose them.*" The statute gives the form of writ in which the same attestation is required. This seems to be the first mention of an indenture for such occasions.

Hallam (*b*), in his observations on the constituents of the House of Commons and their general identity in class with those who returned them, remarks, "we shall perceive that, excepting women who have been generally

(*a*) "Is used for the County Court:" *Cowell's Interpreter*, tit. "County." It was held every month. See 2 *Edw.* 6, c. 25.

(*b*) *Const. Hist.* vol. 3, c. 13, p. 51.

supposed capable of no political right but that of reigning," &c., which seems to imply a doubt whether the general supposition was well founded.

The words of 1 *Hen.* 5, c. 1, the next statute on this subject, are large enough to include both sexes, viz., "First, that the statutes of the election of the knights of the shire to come to the Parliament, be holden and kept in all points, . . . and that the knights and esquires *and others*, which shall be choosers of those knights of the shire, be also resident," &c.

If there be evidence that the right has been exercised by women, it will be for the respondent to rebut the presumption that exercise affords.

Now, the County Court being by law the appointed time and place of election, what was the County Court? *Blackstone* (*a*)—"But elections of knights of the shire must be proceeded to by the sheriffs themselves in person, at the next County Court that shall happen after the delivery of the writ. The County Court is a court held every month, or oftener, by the sheriff, intended to try little causes not exceeding the value of forty shillings, in what part of the county he pleases to appoint for that purpose; but for the election of knights of the shire it must be held in the most usual place" (*b*).

It cannot be doubted that women were at all events suitors and witnesses, and the County Court being the place for trial and redress of causes, the presumption is very strong that women must have been present.

No difference is known to have existed between the nature and constitution of the court for the trial of

(*a*) 1 *Comm.* 178.

(*b*) See also *Tomlin's Law Dict.* tit. "County Courts," and *Coke's* preface to 9 *Rep.* So *Reeves' Engl. L.* vol. 1, pp. 7, 47.

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causes, and that for the election of a knight of the shire.

The stat. *Marlb.*, 52 *Hen.* 3, c. 10, prior to those cited, gives some insight into the composition of the County Court. "For the Turns (*a*) of sheriffs it is provided that archbishops, bishops, abbots, priors, earls, barons, nor any religious men or women, shall not need to come thither except their appearance be especially required thereat for some other cause."

The Latin version is "*nec aliqui viri religiosi, nec mulieres.*" *Religiosi*, as applied to men or women would signify monks or nuns. The statute therefore reads thus, that "ALL men and women except magnates, monks, and nuns, were obliged to be present."

If women attended the County Court, or so important a part of it as the Turn on so important an occasion, it is good evidence in the face of anything express to the contrary, to show that they did so upon others. It is clear from the language of the statute that their sex was not a disqualification. The language used is that of exemption. If the being present had been a privilege to a few instead of a burden to be borne by all, there would have been no need of the exemption which the statute contains. By the words used it was still left optional to a monk or nun to attend if he or she chose. If it be contended that "*religiosi*" must, in construing, be confined to "*viri*," so that "*mulieres*" may be translated "women" in the widest sense, the force of the argument is not diminished. It is plain that women, whether

(*a*) This seems to be a court distinct from the County Court. It was only held twice a year; the sheriff was judge, and not the freeholders. It was the King's leet: *Termes de la Ley*, tit. "Turn;" *Tomlin's Law Dict.* "Turn."

nuns or not, used to be present—indeed were compelled to be present—but by this Act were freed from the duty, not forbidden to assist.

There is also evidence that women took part in the elections. For instance in the indentures returned by sheriffs.

Prynne's Parliamentaria Rediviva (*a*) contains several signed by women. He introduces them thus:

"The first indentures of the elections and retornes of knights for the county of *York* are very remarkable, different from any I have seen in other shires of *England*. The attornies of the Archbishop of *York*, and of sundry earles, lords, nobles, and some ladies who were annual suitors to the County Court of *Yorkshire* being the sole electors of the knights, and sealing their indentures, witness this first indenture yet extant for this county, *Anno* 13 *Hen.* 4, upon the writ of 12 *Hen.* 4, *apud* Westminster, in which appears among the parties, 'Willm. de Kyllington, *attornatum* Lucie, Comit. Kanc.' *i.e.* Lucy, Countess of Kent."

In the indenture (*b*) returned upon the writ for election of knights for the Parliament, 2 *Hen.* 5, "Robertum Barry, *attornatum* Margarete *que fuit uxor* Henrici Vavasour *Chlr.*" is a party to the indenture (*c*).

In the 1 *Commons' Journal*, 875, on occasion of a disputed return for *Gatton* (*temp.* 3 *Charles* 1) occurs this entry, "On the other part, 7 *Edw.* VI., Mrs. Copley *et omnes inhabitantes* returned."

(*a*) P. 152.

(*b*) *Ibid*, p. 153.

(*c*) *Prynne* seems to be rather dealing with the question of voting by attorney. On p. 153, he says, "In all which [indentures], the attornies only of nobles, barons, lords, ladies, and knights, who were suitors, made the election of the knights of Yorkshire, and sealed the indentures." Still, the instances imply a right of voting in a lady of title being a freeholder.

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[WILLES, J. Perhaps she was returning officer.] (*a*)

That might be so in other instances, but probably not in this, as the right to return for *Gatton* was claimed by the *Copleys* as their exclusive privilege.

Another instance is given in *Heywood's County Elections* (*b*), "To all Christian people to whom this present writinge shall come, I, Dame Dorathe Packyngton, wydowe, late wief of Sir John Packyngton, Knt., lord and owner of the towne of Aylesburye, [in the county of Bucks, and nowe tenente in dower of the said towne of Aylesburye,] sendeth greeting. Know ye, me, the said Dame D. Packyngton to have chosen, named, and appointed my trusty and well beloved Thomas Lichfield and George Burden, Esquires, to be my burgesses of my said towne of A. . . And whatsoever the said Thomas and George, burgesses, shall do in the service of the Queen's Heighness in that present Parlt. to be holden at Westminster the . . daie of May ensewinge the date hereof, I, the said D. do ratify and approve to be my own act as fully and wholly as if I were or might be present there. In witness whereof, to these presents I have set my seal, this 4th day of May in the 14th year of the reign of our Sovereign Lady Elizabeth" (*c*), &c.

(*a*) Lord C. J. *Lee*, in *Olive* v. *Ingram*, 7 *Mod.* 268, where this instance was mentioned, remarks, "In Lady *Packington's* case, *Browne Willis* returns to Parliament that the sheriff made a precept to her, as lady of the manor, to return two members to Parliament." See *Browne Willis' Notitia Parliamentaria*, vol. 1, p. 129, where he calls this "submitting to the Packingtons' nomination of burgesses in Parliament."

(*b*) P. 256.

(*c*) An office copy was produced of this from the Records sufficiently perfect for identification, but so injured, that without the aid of *Heywood's* copy it would be difficult to make out its meaning. Where it can be made out, its text is preferred to *Heywood's*, by whom the part in brackets is omitted.

4 *Coke's Inst.* c. 1, p. 5, is the noted passage usually cited against the right now struggled for: "And in many cases multitudes are bound by Acts of Parliament which are not parties to the election of knights, citizens, and burgesses, also all they that have no freehold, or have freehold in Auncient demesne *and all women having freehold or no freehold.*"

The authority of this passage is diminished by the fact that *Coke* puts parsons also among those incapacitated, in which there is little doubt as to many instances he is wrong. *Heywood*, in discussing (*a*) the resolution in the *Cambridgeshire* case, passed *A.D.*, 1624, "that parsons and vicars that have no *other* freehold but glebe lands ought not to have a voice in elections," points out that this "raises an inference that they were not *personally* incapacitated, but that if possessed of other freeholds they were entitled to vote as well as any other freeholders."

In 2 *Luders* (*b*), the *Lyme* case, it was contended the *Burgensis* was synonymous with the *liber tenens* as distinct from freeman, and for this purpose an ancient resiant roll, dated 29th *Sept.*, 19 *Eliz.*, containing a list of the inhabitants described in three classes, was put in. In the class entitled "Burgenses sive liberi tenentes" are the following names: Elizabetha, *filia* Thomæ Hyatt, Crispina Bowden, *vidua*, Alicia Toller, *vidua*; and the names of several men. In the class "Liberi homines" five of these same names occur.

Another resiant roll was read, dated 18th *Dec.*, 21 *Eliz.* This contained two classes, "Liberi burgenses," and "Liberi homines." In the first of these are sixteen names, chiefly the same as those in the former roll, under the

(*a*) P. 120. (*b*) P. 13.

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class of *liberi burgenses*, all of which, except Alicia Toller, are again entered under the class of *liberi homines*.

The roll was the list kept by officers of the court leet, and shows the names of persons bound to attend it, being "*Burgenses et liberi tenentes.*"

The names of women are on the list, all entered as *liberi homines*, or *liberi burgenses*, or *liberi tenentes*, except Alicia, who is omitted for some reason from the list of *liberi homines* or freemen.

It is clear the men had certain rights depending on certain qualifications. If the women are put in the same lists in respect of similar qualifications, it is a fair presumption that they had common rights with the men.

Then, assuming it to have been shown that the right of women to vote did exist, has subsequent legislation deprived them of it?

The stat. 10 *Hen.* 6, c. 2, may in part have disqualified some—at all events those possessing freehold of less than 40s. a year within the county; yet there is nothing in the statute to take away a woman's right if such existed previously. The Norman French "*gentz*" or "*gens*" is of common gender.

[BOVILL, C. J. I observe that the statute 8 *Hen.* 6, c. 7, bears the title in English, "What sort of MEN shall be choosers?" &c.; and the statute of 10 *Hen.* 6, c. 2, "Certain things required in *him* who shall be a chooser of the Knights of Parliament?"]

Those titles have no doubt been added since the framing of the statutes and have nothing to do with them. It is dangerous to trust the translation of the statutes themselves, as, for instance, it will be found in

the originals of the early statutes that the Pope is called "Our Holy Father;" but in the translation he is styled "the Bishop of Rome," a plain mis-translation through bias and more modern opinion.

[BYLES, J. *C. J. Treby* (*a*) says, "The title of the Act is but a new usage, and began about 11 *Hen.* 7."]

It really comes to a question of what is the right conclusion to be drawn from the evidence just reviewed—whether the fair inference is against the sex, of a disability which clearly did not exist against it in other matters of similar character.

There is nothing in the language of the statutes *in pari materiâ* by which, supposing women to have ever had the franchise, they could be deprived of it. They are never, it is true, expressly mentioned, but the words used are "men," "people," and the like. It is admitted the exercise of the right was rare. There was then no strife of party. Parliament was a mere taxing machine; elections were not scenes of political strife, but of the selection of representatives.

(*a*) *Chance* v. *Adams*, 1 *Lord Ray.* 77; *Barrington on Stat.* p. 52, calls attention to 51 *Hen.* 3 as being "the first of the statutes in French, and from that date they continued to be so composed until 1 *Rich.* 3, even after *Edw.* 3 had abolished the use of French in pleading."

In the Introduction to the *Statutes of the Realm*, vol. 1, p. 1, printed and published under Royal Commission, it is stated, "The statute rolls, previous to the beginning of the reign of *Henry* 7, being sometimes in Latin and sometimes in French, and from that time uniformly in English." "*The Abridgment of the Statutes*, in English to 11 *Hen.* 8, translated and printed by *John Rastall*, is preceded by a preface on the propriety of the laws being published in English. This appears to be the first *English* abridgment of the statutes, and it helps to ascertain the period when the statutes were first 'endited and written' in English, as the preface ascribes that measure to *Hen.* 7."

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Statutes *in pari materiâ* are 10 *Hen.* 6, c. 2, requiring that knights . . . be chosen . . . by *people* dwelling, &c.

7 & 8 *Will.* 3, c. 4, by which candidates are forbidden to " directly or indirectly give, present, or allow to any *person* or persons having voice in such election any money, meat, drink," &c.

7 & 8 *Will.* 3, c. 25, s. 3, the sheriff is " to set down the names of each freeholder," &c.; and in ss. 7, 8, " person or persons" allowed to vote are spoken of . . .

10 *Anne*, c. 23, preventing fraudulent conveyances to multiply votes. " Freeholders" and " persons" are the descriptive words of voters.

2 *Geo.* 2, c. 24, as to bribery. The words are " freeholder, citizen, freeman, burgess, or person."

20 *Geo.* 3, c. 17, on county elections, speaks of " person."

Of course there are many statutes on other subjects in which the male sex only is mentioned, but where women are also intended.

In the Reform Act, 2 *Will.* 4, c. 45, it is remarkable how distinct is the phraseology applied to the subjects of new as compared with old rights. Thus in sect. 18, where the right previously existing of voting in respect of freeholds for life, is confined to actual and *bonâ fide* occupiers, the words are " no person;" but in sect. 19, creating the new franchise for counties in respect of copyholds, the words are " every male person." This last seems intended to set any doubt at rest as to what it created.

In regard to boroughs reference may be made to *Hallam* (*a*), for a sketch of the theories as to the

(*a*) 2 *C. H.* (5th ed.) c. 13, p. 20.

classes originally entitled to vote. They contended for several classes:—

1. The inhabitant householders resident and paying scot and lot.

2. Tenants of certain freehold lands or burgages.

3. Freemen of corporations under charter.

4. Not all the freemen, but the governing part or municipal magistracy.

The first he shows has the authority of Serjeant *Glanville*, and an eminent committee of the House of Commons in 1624. They call it the common law right. The second was favoured by Lord *Holt*, in *Ashby* v. *White*. The third has been most generally received in modern times, while the last he attributes to Dr. *Brady* (*a*), an adherent of *James* 2. The first charter extant for incorporating a town is that of *Wenlock*, under *Edw.* 4. *Hallam* remarks, "These charters . . . were incorporations of the *inhabitants*, and gave no power either to exclude any of them or to admit non-resident strangers." "The word burgess (*burgensis*) . . . meant literally the free inhabitant householder of a borough a member of its court leet, and subject to its jurisdiction." This gives weight to the *Lyme* case. In all these classes women might and would be included. *Hallam* rejects the two other classes as not historically supported.

The 23 *Hen.* 6, c. 14, provides that the sheriff shall deliver a precept to the mayor or bailiff where no mayor is, to choose by citizens or burgesses, and the mayor or bailiff is to return the precept to the sheriff "by indentures betwixt the same sheriff and them to be made of the said elections, and of the names, &c., so chosen."

(*a*) Author of *Brady's Hist. of Boroughs.*

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Women might, it is submitted, well be citizens or burgesses.

Secondly, by force of the Act 13 *Vict.* c. 21, known as *Romilly's* Act (*a*), passed since the Reform Act in 1832, the word "man" must include woman, for the latter Act declares "that in all Acts words importing the masculine gender shall be deemed and taken to include females," unless the contrary is *expressly* provided.

It is not permitted to refer to what happened in Parliament at the passing of an Act to ascertain its meaning, but if a suggestion of the operation of the statute of 13 *Vict.*, upon the clause now under construction and then being passed, were made to the House of Commons, and a proposition to limit the franchise in express terms to the male sex were rejected, it would be a strong argument that the Legislature intended the anticipated result to follow.

30 & 31 *Vict.* c. 102, ss. 3, 4, 5, 6. There can be no legal incapacity attributed to women unless it be from non-user, and that cannot take away a public right.

Olive v. *Ingram* (*b*), the head note says, "A woman may be chosen *sexton*, and may vote at elections." The case of Lady *Packington* (*c*) above quoted is there referred to as taken from *Brady's* Appendix to his "History of Boroughs" (*d*). *Lee*, C. J., says, "By a collection of *Hakewell's* (*e*), in the case of *Catherine* v. *Surry*, the opinion of the Judges, as he says, was that a *feme sole*,

(*a*) But wrongly so called. Sir *J. Romilly* was, it is true, solicitor-general at the time, but the Act was drawn and introduced by Lord *Brougham*.

(*b*) 7 *Mod. Rep.* 263; *S. C.* 2 *Strange*, 1114.

(*c*) See 7 *Mod.* 268, per *Lee*, C. J.

(*d*) P. 35.

(*e*) These MS. are nowhere to be found. The Editor of the *Modern Reports* refers to *Hakewell's Modus Tenendi Parliamentum*, which contains nothing to the point, and is only a translation by *Hakewell* of an ancient treatise, of which *Coke*, in 4 *Inst.*, p. 12, gives some account.

if she has a freehold, may vote for members of Parliament;" though *Probyn*, J., says, "But this cannot determine that women vote for members of Parliament, as that choice requires an improved understanding which women are not supposed to have." *Lee*, C. J., later on (*a*) says, "And whether they have not anciently voted for members of Parliament, either by themselves or attorney, is a great doubt. I do not know upon inquiry, but it might be found that they have." *Probyn*, J. (*b*) says, "In elections for members of Parliament women are not now admitted whatever they were formerly;" "upon another reason, because of the judgment required in it." *Lee*, C. J., refers again to *Hakew.* MS., and to *Coates* v. *Lisle* (*c*), and *Catherine* v. *Surry*, said to have been quoted in it. It is true he adds, "I would not be understood to declare it to be my opinion that women may vote for members of Parliament."

The point was not determined. Still the argument and dicta are of weight to show that the matter was so late as 1739 considered arguable.

[WILLES, J. Can you find that a woman ever acted as Judge of the County Court where the suitors were judges?] (*d*)

No. In *Olive* v. *Ingram* it was assumed that a woman could not be overseer. That however was decided to be erroneous by *Rex* v. *Stubbs* (*e*).

(*a*) P. 267.

(*b*) P. 268.

(*c*) P. 271.

(*d*) See 2 *Inst.*, stat. *Marl.*, p. 119. "Note—a woman may be a free suitor to the courts of the Lord; but, though it be generally said that the free suitors be *judges* in these courts, it is intended of men, and not of women."

(*e*) 2 *Term R.* 395.

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The reasoning in the judgment there was, "The only qualification required by 43 *Eliz.* is that they (overseers) shall be *substantial householders;* it has no reference to sex. The only thing is whether there be anything in the nature of the office that should make a woman incompetent? and we think there is not."

If the word householder do not exclude women, why should such words as burgess?

By 4 & 5 *Will.* 4, c. 76, s. 39, the "ratepayers and owners of property" are to elect the guardians of the poor. Women may vote under this class.

In *Reg.* v. *Crosthwaite* (*a*), the question was whether under the Irish Towns Improvement Act (*b*), the words of which are "Every person of full age who shall have occupied as tenant or owner," &c., women had the right to vote, and the Court of Queen's Bench held that they had, and a doubt was expressed whether women might not act as commissioners.

It is true that was reversed in the Exchequer Chamber by four Judges to three, . . . so that in the result the judgment of four has overruled that of seven.

In *Reg.* v. *Mayor of Aberavon* (*c*), decided on the stat. 7 *Will.* 4 and 1 *Vict.* c. 78, one of the Municipal Corporation Acts, the words "inhabitant householders" were argued to extend to compound householders within the meaning of sect. 49, which gave authority to the inhabitant householders of any town to petition the crown for a charter of incorporation. Such words would include women.

Lastly, if the ordinary ground of representation be looked to, that representation should accompany taxa-

(*a*) 17 *Ir. Com. L. Rep.* 157, 463.

(*b*) 17 & 18 *Vict.* c. 103.

(*c*) 13 *W. R.* 90.

tion, women pay taxes. If it be said that women are inferior and unfit, that their great influence would be wrongly exerted, that their mingling in public affairs would be unseemly, it may be answered that there are many women far more intelligent than unintelligent men, yet these last are trusted with the franchise. If the influence of women be dreaded, it is already as powerful and fully exerted as it can be. The presence of women might lend refinement to political contests. Their own discretion would instruct them what was unseemly, and to avoid it. It cannot be denied that many men are unfitted for the franchise. It must be admitted that many women are well fitted to claim it. All must concede that there is no better guide to what is proper for her sex, suitable to good taste, alike her pleasure and her duty, than an Englishwoman's judgment.

Mellish, Q. C., contrà (*R. G. Williams* with him). It is plain the question must turn almost entirely on the sect. 3 of the Representation of the People Act, 1867.

It is a claim to vote for a borough, and that borough, *Manchester*, to which representation was first given by the Reform Act, 2 *Will.* 4, the new franchises of which it is admitted were confined to male persons. That Act was prior to the "Act for Shortening the Language used in Acts of Parliament," 13 *Vict.* c. 21. Unless therefore the right be created by the sect. 3 referred to, and the force of the last named Act, it cannot have existence. The larger question as to counties seems hardly arguable. When it is admitted that it was the understanding of lawyers at the passing of the Act that the right did not exist, it is as strongly against any new *creation*, or

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intention to create the right as if it had been forbidden by law. Even in an antiquarian point of view, the evidence is not satisfactory; but for the purpose of forming a legal judgment, what has been the understanding acted upon as far back as memory goes, must be conclusive. No doubt if it were conceded that the right once existed, that which is urged as to non-user would be quite correct. Still in determining whether it ever existed, this Court will give the greatest weight to long established unvarying opinion. Independently of the 13 *Vict.* c. 21, there would be nothing to be said for the claim. But for that Act could it be doubted that substitution of the word "man" for "male person" was only adopted to obtain shorter and simple language—perhaps better English?

But the Act to be construed is not the 13 *Vict.* c. 21, but the Representation of the People Act, 1867. No previous Act can have any effect if the meaning of this last is clear. The usage being that women did not vote, and could not vote, can it be said that Parliament intended to make a great constitutional change by such a process as this? If the Court hold such to be the case, there will have been effected a great alteration in the Constitution by mere accident. The Constitution will have been changed by the act of the Judges.

Some of the sections throw a light on the subject. Sects. 56 and 59 carry the construction of it back to the Reform Act.

The two Acts are to be read as one. How can this be so if a different interpretation clause be in fact inserted into the second from that in the first? That alone would go to show that the 13 *Vict.* c. 21 was not intended by the Legislature to apply.

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"Man" is used in two senses—either to represent all the human race, when it includes women and children, or the male portion of the human race, as distinct from women and children—in fact, what in ordinary language is meant by a man.

If it means a human being, not a woman or child, then the Act expressly excludes a woman from voting. What is intended in the Reform Act by male person of full age—that is to say, not woman or child—is meant here.

The true construction would seem to be that "man" was used here to exclude woman or child. Any other construction would lead to absurdity; for instance, the Mutiny Act authorises the raising of so many men. Could that include women? In the Act for flogging garrotters it might be pretended that women were included. In fact one's common sense must be consulted.

Even supposing that man may be construed to include woman, surely it must involve another question, the consideration of legal incapacity, before it can be contended the right is proved. What is incapacity? How is it shown? By the fact, that the early statutes (especially that of *Hen.* 6, which uses the word "people") which are relied on by the appellants, are couched in the most general terms, and yet in practice as far back as human memory goes, have been construed or acted upon in a manner to exclude women. Lord *Coke*, whether right or wrong in the opinion he gives, shows that women did not *in fact* vote.

Olive v. *Ingram* (*a*), in the reign of *Geo.* 2, and

(*a*) *Ubi supra.*

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the *Aylesbury* case cited on the other side, prove the same thing.

Some of the statutes do not expressly exclude infants or aliens. Can they then vote? Certainly not; they are under legal incapacity.

Speaking of the Sheriff's Tourne, *Coke* says (*a*), "that parsons of churches were not compellable to come to Tournes or Leets, and if they were distrained to come might have a particular writ;" he adds, "so likewise women shall have the like writ." Women were never judges or jurors.

[*Coleridge* suggested a jury of matrons.]

At all events they never sat on the same jury with men.

[WILLES, J. The Sheriff was Judge of the Tourne (*b*), but in the County Court the freeholders were the Judges.]

The election would be in the County Court.

In some instances it happened that a woman of rank was the patron of the borough. In some she was returning officer. No decision can be cited—no clear rule be shown. What the evidence comes to is, merely a few instances of returns of uncontested elections which could not have been rendered invalid by one or two signatures to the indenture.

In the *Aylesbury* case it was set aside where a woman alone returned.

(*a*) 2 *Inst.* stat. *Merl.* 121. (*b*) 2 *Inst.* 190.

Olive v. *Ingram* is in favour of the respondent. The MS. there quoted must be of very doubtful authority.

[WILLES, *J.* Who could represent a peeress in her own right? There is a case of the time of *Charles* 1 relating to the dignity of a peer referred to in the argument as to Lord *Wensleydale's* peerage. It is there stated that a commoner marrying a peeress becomes a peer. That is now exploded.]

The Reform Act of 1832, sect. 27, gives the franchise in respect of a house, warehouse, &c. The Act of 1867 reduces the standard of qualification as to dwelling-houses only. Now if the argument be correct for the appellant, what power is there to give women the franchise as to warehouse and the rest of the class in the first Act?

He cited, further, the decision by the Judges in Scotland, then only in the newspaper reports, upon the same statute against the creation for women of the right to vote.

Coleridge, in reply. The case before the Scotch Judges ought not to have much weight, because their system of law is founded on the Civil Law, which is well known to contain many restrictions and exclusions of women.

As to the evidence of the former existence of the right, it is to be observed, that as the early statute required that the indenture of return should be sealed by those present at the County Court, the seals of women attached show them to have been present as constituents of that Court. It is believed that peeresses in their own right did vote in Parliament. According to *Selden*, four

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abbesses sat there, *anno* 5 *Edw.* 1 (*a*), and twenty-nine years later that continued (*b*). It is plain, therefore, that there is nothing so very new in the present claim, or so absurd in its results as those ignorant of the subject suppose. It is admitted that the Reform Act, 1832, in the clauses which create new franchises—for instance, sects. 19, 20, and 27—speaks of "male person," but sect. 18, limiting the old, has simply "person," so sects. 22, 23, 24, etc.

Then is passed by the Legislature, with full knowledge of the 13 *Vict.* c. 21, the Act of 1867, which discards the words "male person," and enacts "every man."

Even as to infants, the stat. *Marl.* 52 *Hen.* 3, c. 24, shows that twelve years was the age at which legal incapacity ceased. It runs:—"The Justices in *Eyre* from henceforth shall not amerce townships in their circuits, because all being twelve years old came not afore the sheriffs and coroners to make inquiry of robberies, burnings of houses, . . . so that there came sufficient out of those towns by whom such enquests may be made full, except enquests for the death of man, whereat all being twelve years of age ought to appear unless they have reasonable cause of absence" (*c*).

The case put of the Mutiny Act can hardly be seriously treated. Could a woman, who had chosen to enlist and

(*a*) *Selden's Tit. Honor*, 757.

(*b*) *Palgrave's Parliamentary Writs*, vol. i., 164; 34 *Edw.* 1.

(*c*) *Coke* (2 *Inst.*, p. 147) comments upon the above, as to those under twelve, thus:—"And therefore, albeit they could not be present *ad inquisitionem faciendam*, being under age of twenty-one, yet they ought to be there to take the oath, and to discover felonies, if any they knew according to their oath." See *Co. Litt.*, sect. 259, "when it is said that males or females be of full age, this shall be intended of the age of twenty-one years." "Also a man before the sayd age shall not be sworne in an enquest."

had afterwards been guilty of mutiny, be heard to plead that the Act only had regard to "man?"

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Cur. adv. vult.

BOVILL, C. J. It is quite unnecessary to consider the general question whether it is desirable that women should possess the franchise of voting at the election of members of Parliament. What the Court has to determine is whether they now possess that right. In the present case it is agreed that the right of the appellant must depend on the construction to be placed on the Representation of the People Act, 1867. On that statute two questions are raised—first, whether women are included in the words "every man;" and, secondly, whether women are subject to any legal incapacity. If women are not included in those words "every man" in the Act, or are incapacitated, the judgment of the Court must be in favour of the respondent. On the question whether they were incapacitated, Mr. *Coleridge* contended that women had a right to the franchise at common law, that nothing had taken it away from them, and that, therefore, they were not incapacitated. Indeed, in the present instance, I rather understood him to contend that the appellant was entitled to vote by common law right. There has not been produced before the Court any reported decision in favour of the right of women to the franchise, unless the notes of cases referred to in *Olive* v. *Ingram* (a) can be so called, and Mr. *Coleridge* was obliged to admit that for several hundred years no instance could be found of the exercise of any such right.

(a) 7 *Mod. Rep.* 263.

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This alone was sufficient to raise a very strong presumption of the non-existence of the right in point of law. It is quite true that a few instances of women being parties to indentures of returns of members of Parliament have been shown, and it is quite possible that there may have been some other instances in early times of women having voted and assisted in legislation. Indeed, such instances are mentioned by *Selden* (*a*). But these are of comparatively little weight opposed to the usage of several centuries, and what has been commonly assented to as the law, raises a strong presumption of what the law is, and casts upon those who dispute it the burden of proof. The statute 52 *Hen.* 3, c. 10, relieving women from attendance at the Sheriff's Tourn, and the instances referred to in the *Lyme* case in 2 *Luders'* Reports, by no means establish that women ever had the right to or did in fact vote. A record produced of the 1 & 2 *Philip* and *Mary* showed that Dame *Copley* assisted in the return of the member for *Gatton*, it might be as returning officer, or as lady of the manor, and this might explain the other similar instances; and the same observation applies to the instances in which Lady *Packington* assisted at election returns, since it may be gathered from the report of *Olive* v. *Ingram* (*b*), that the precepts were addressed to her as lady of the manor, and directed her to return two members to Parliament. With regard to the cases mentioned in *Olive* v. *Ingram*, and cited from some manuscript work of Mr. *Hakewell*, it may be pointed out that they vary in different parts of the report; and although the argument was several times adjourned, it does not appear that anything reliable could be dis-

(*a*) *Epinomis*, vol. 3, p. 10. (*b*) 7 *Mod. Rep.* 263.

covered respecting it. They are not even mentioned in the report of the same case in *Strange's* Reports, and altogether but little weight can be attached to them. If there were any such decision as that said to be decided in 14 *Jac.* 1, it is surprising that no further notice or trace of it should be found. At this distance of time we have no means of ascertaining the particulars of such a case, nor the circumstances under which the returns which have been referred to were made, or what questions were raised respecting them. The decisions as to what offices women may hold, or whether they come within the description contained in particular statutes, do not materially assist us. On the other hand, Lord *Coke* (*a*) treats it as clear law in the time of *James* 1, that women were incapacitated from voting; and in the case of *Olive* v. *Ingram* the majority of the Judges were of that opinion.

In the work of Serjeant *Heywood*, who was well acquainted with election law, published in 1812, women are classed among those who are incapacitated from voting, and the same view has been accepted by *Hallam* and other writers in modern times, and was to some extent recognized by the Legislature in 1832, when by the Reform Act they conferred the franchise in boroughs upon "male persons." There can be no doubt, too, that at the time of the passing of the Act of 1867, the common understanding of lawyers and all others was that women were incapacitated from voting, and the Legislature must be assumed to have acted under that impression; and yet by sect. 56 it reserves all "laws, customs, and enactments then in force." Mr. *Coleridge* has forcibly

(*a*) 4 *Inst.* 5.

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contended that if women were ever entitled to the franchise no Act has been passed—nothing has occurred to take it away; but if that be so, yet the fact of its not having been asserted for centuries raises a very strong presumption against its ever having had legal existence. Considering therefore that there is no reliable decision or authority reported in favour of the claim, that there are the opinions against it of high authority to which I have referred, and that the usage to the contrary has been so long and uninterrupted, I come to the conclusion that there is no such right, and that women are subject to legal incapacity within the meaning of sect. 3 of the Representation of the People Act, 1867. Assuming, however, that the claimant were not so subject within the meaning of the statute, the question would then arise whether the franchise has been conferred upon women by that Act, aided by the provisions of Lord *Romilly's* Act. That would depend upon the proper construction to be placed upon sect. 3 of the Representation of the People Act, 1867, which enacts that "Every man" with certain prescribed qualifications, shall be endowed with the franchise as voters in boroughs.

By the 13 & 14 *Vict.* c. 21, s. 4, it is enacted that "In all Acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided."

In construing the 3rd section of the Representation of the People Act, 1867, regard must be had to the whole of the enactment, with a view to ascertain whether the word "man" be used in the sense of "person," or is meant to signify "male person." By sect. 56 of that

Act, it is provided that "the franchises conferred by this Act shall be in addition and not in substitution for any existing franchises, but so that no person shall be entitled to vote for the same place in respect of more than one qualification, and subject to the provisions of this Act, all laws, customs, etc., shall remain in force." By sect. 59 it is enacted, "This Act, so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force, relating to the Representation of the People, and with the Registration Acts."

By the Reform Act of 1832 the occupier's franchise in boroughs is expressly given to male persons being qualified as therein is required; and by sect. 33, "No person shall be entitled to vote in the election of a member or members to serve in any future Parliament for any city or borough, save and except in respect of some right conferred by this Act, or as a burgess or freeman, or as a freeman and liveryman, or, in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned." It is perfectly clear that women would not be entitled to the franchise under that Act, and as the two Acts are to be construed as one, we should endeavour as far as possible to place such a construction upon the late Act as would make it consistent with the provisions of the former statute. There is no doubt that in many statutes "man" may properly be held to mean woman, whilst in others it would be ridiculous to suppose it was used in any other sense than as designating the male sex. One must look at the subject-matter as well as to the general scope and language of the provisions of the late Act, in order to ascertain the meaning of the Legisla-

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ture. I do not collect from the language of the Act that there is any intention to alter the description of the persons who are to vote, but I should conclude the object was to deal with their qualifications, and if so important an alteration was intended to be made as to extend the franchise to women who had not before enjoyed it, and were in fact excluded from it by the terms of the Reform Act, it could hardly be supposed that the Legislature would have made it by using the term "man;" indeed, in the very next Act, which was intended to apply to and extend the Factory Acts, women and females are expressly included.

The conclusion at which I have arrived is that the Legislature used "man" in the same sense as "male persons" in the former Act, that this word was intentionally used in order to designate expressly the male sex, and that it amounts to an express enactment and provision that every man, as distinguished from woman, possessing the qualification, was to have the franchise, and in that view Lord *Romilly's* Act does not apply to this case, and will not extend the meaning of the word "man" so as to include "woman." Upon this part of the case the decision of the Court of Session in Scotland is also in point, and in that decision I entirely concur. On both grounds, therefore—first, that women were legally incapacitated from voting for members of Parliament, and, secondly, that the section is limited to men, and does not extend to women—I think women are not entitled to the franchise, and the decision of the Revising Barrister must be confirmed in this and the other cases which depend upon it. It is not a case in which costs should be allowed.

WILLES, J. I am of the same opinion. The application of the Act called *Romilly's* Act, contended for by the appellant, is a strained one. It is not easy to conceive that the framer of that Act, when he used the word "expressly," meant to suggest that what is necessarily or properly implied by language is not expressed by such language. It is quite clear that whatever the language used, necessarily, or even naturally implies, is expressed thereby. Still less did the framer of the Act intend to exclude the rule, alike of good sense, grammar and law, that general words are to be restrained to the subject-matter with which the speaker or writer is dealing.

Apply these conclusions, and remember that the Act to be construed is not only to be interpreted according to these general rules, but that it expressly enacts (*a*) that it is to be construed together with the previous Acts on the same subject, and especially the great Act of 2 *Will.* 4, c. 45. What is the result? It is that the Legislature, up to the passing of the Act of 1867, was unquestionably dealing with qualifications to vote, of men in the sense of male persons, and was providing what should entitle such individuals of mankind to vote at Parliamentary elections; and, without going through the Act of 1867, I may say that there is nothing, unless it be the point now in question, to show that the intention of the Legislature was ever diverted from the question what should be the qualification entitling male persons to vote, to the question, whether the personal incapacity of other persons to vote should be removed. The Act throughout is dealing, not with the capacity of individuals, but

(*a*) Sects. 56, 59.

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with their qualification. Assuming, therefore, that women would have had a right to vote by the common law, apart from the statutes, it would require something further to establish that more modern legislation has done away with the restriction (if it was a restriction), imposed by the Reform Act, which in terms confines the right of voting in the new constituencies to male persons.

It further appears to me that the Lord Chief Justice is right in holding that, assuming *Romilly's* Act to apply, it would not have worked the change that is desired in favour of women, because the Act of 1867 does "expressly" in every sense exclude persons under a legal incapacity, and women are under a legal incapacity to vote at elections. What was the cause of it, it is not necessary to go into, but, admitting that fickleness of judgment and liability to influence have sometimes been suggested as the ground of exclusion, I must protest against it being supposed to arise in this country from any under-rating of the sex, either in point of intellect or worth. That would be quite inconsistent with one of the glories of our civilization—the respect and honour in which women are held. This is not a mere fancy of my own, but will be found in *Selden* (*a*), in the discussion of the origin of the exclusion of women from judicial and like public functions, where the author gives preference to this reason, that the exemption was founded upon motives of decorum, and was a privilege of the sex (*honestatis privilegium*). *Selden* refers to many systems of law in which this exclusion prevailed, including the civil law and the canon law, which latter, as we know,

(*a*) Vol. 1, tom. 2, p. 1083, *De Synedriis Veterum Ebræorum.*

excluded women from public functions in some remarkable instances. With respect to the civil law, I may add a reference to the learned and original work of Sir *Patrick Colquhoun*, on the Roman Law (*a*), where he compares the Roman system with ours, and states that a woman "cannot vote for members of Parliament, nor sit in either the House of Lords or Commons."

As to this country in particular, there is this passage referred to by the Lord Chief Justice from *Selden's* "England's Epinomis" (*b*), which has reference to the ancient Britons, whose custom was that women "had prerogative in deliberative sessions touching either peace, government, or martial affairs." But this is stated as a peculiarity of the Britons; and, coming down to the time of the Saxons (*c*), of whom no such custom is recorded, it appears that women cannot have been admitted to their councils, where no one took part unless entitled to bear arms, and invested with them in the public assembly, which investiture *Tacitus* (*d*) likened to the assumption of the *toga virilis*, and *Selden* to being knighted. It is true that abroad the order of knighthood was sometimes conferred upon women; but this does not appear ever to have been the case in England; for *Littleton* (*e*) shows that a woman could not perform knight's service in person, and, when land held by military tenure came to her by descent, she had to perform the duty by deputy. And here I may observe that, in the cases of constable and sheriff, which latter is the highest authority produced by the appellant for the exercise of public functions by a woman, the reason

(*a*) Vol. 1, p. 580.
(*b*) Vol. 3, p. 10.
(*c*) *Id.* p. 13.
(*d*) *Germa.* c. 13.
(*e*) Sect. 96, and *Co. Litt.* 70, b.

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given in the authority referred to as to the constable was, that she could appoint a deputy (*a*), which a voter or member of the House of Commons could not do; and in the solitary and exceptional case of the shrievalty of *Westmoreland* (*b*), Anne, Countess of *Pembroke*, took by descent pursuant to the grant to her ancestor, De Vipont, and his heirs general, an office which could have been and usually is discharged by deputy, although the Countess, being a person of unusual gifts both of body and mind, thought fit to discharge the duties in person.

Mr. *Kemble*, in his "Saxons in England" (*c*), in which work he had the assistance of the invaluable labours of the Record Commissioners, discusses the constitution of the *Witena Gemot* in Anglo-Saxon times; and in p. 198 he refers to one or two charters somewhat analogous to the returns referred to by Mr. *Coleridge*, signed by the Queen and other women always, as Mr. *Kemble* believed, ecclesiastics of rank and wealth: but he by no means draws the conclusion that women could regularly take part in the public councils of the Anglo-Saxons; and he considers that the abbesses who signed, if present at the *Gemot*, were so, for the purpose of watching matters affecting the interests of their convents, and attesting its acts in such matters, without forming part of the regular body—just, it may be observed, as the judges have at present a right to be in the House of Lords, in order to advise, but not to vote. And, as to the other women of distinction present, he suggests the probability of their names being put in by way of compliment—an explanation not unlikely, if, as I believe, it has not been un-

(*a*) 2 *Hawk.* c. 10, s. 37.
(*b*) *Co. Litt.* 326 a, notis.
(*c*) Vol. 2, pp. 180, 196, 198.

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common in modern times (I know of one instance in which it was done) for persons who happened to be present when the indenture of return was being signed to be asked to sign, even though they were not electors. Indeed, it has been questioned whether indentures so signed were good, and decided that they were if properly signed by the returning officer.

Coming now to a more recent period, it is said that women might be suitors of the county court, and must therefore have been among the voters for the election of knights of the shire. But, even supposing that women could be present, could they act as suitors, who were in fact the judges of the questions which came before the Court? Apparently not, for, we know from authority, as well as experience, that, except matrons, in the case of a writ *de ventre inspiciendo*, or of an enquiry as to pregnancy upon a plea in stay of execution by a woman capitally convicted, women could not sit on juries, &c. (*a*). It seems, therefore, that women, even when suitors, were excluded, or rather excused, by the common law from exercising the public functions of suitors, in which capacity it was suggested that they must have had the right of voting.

The Lord Chief Justice has gone through the authorities against the alleged right; to which must be added that, on the other hand, no authority within those limits to which we ought to confine ourselves, as lawyers, has ever laid down the contrary, because, in the course of the discussion of *Olive* v. *Ingram* (*b*), *Lee*, C. J., appears to have at last satisfied himself that women could not vote for members of Parliament.

(*a*) *Lambard's Eirenarcha*, 397. (*b*) *Ubi supra*.

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And now let us see if no light can be thrown on the question from a neighbouring quarter. We have been dealing with the question whether women can be represented in the House of Commons. But, take the case of a peeress in her own right, who, if of the other sex, would have a seat and vote in the House of Lords, can she appear and take her seat there? No; it is unquestionable that she can neither sit herself nor vote by proxy. She has most of the other privileges of her peerage; but, what is her case with respect to her being represented in Parliament? It appears to have been supposed at one time that she could appoint a proxy; but this soon died out; and until still later times it was thought that, if married, she could be represented by her husband, who should be a peer in her right. *Coke Litt.* (*a*) refers to a record favouring that opinion, and adds that readers must form their own judgment whether the law is so or not. Lord *Hale's* note to that passage shows that he thought that, after issue born, the husband would, or might, have the right. However, that was questioned in a note of Mr. *Hargrave* (*b*); and in a note by Mr. *Butler* (*c*), it is shown that though both in this country and also in France it was once thought that there could have been such a right of representation, yet, to use Mr. *Butler's* expression, the right must now be considered as "extinct," or perhaps, in as much as in our system there is no negative prescription against a law, it may be more correct to say that the right never existed. Can there be any difference in the case of women, whose right to take part in the public councils, if it ever existed, would in modern times of necessity have

(*a*) 29 b.
(*b*) *Co. Litt.* 29 b, n. (1).
(*c*) *Id.* 326 a, n. (2).

taken the form of choosing some one to represent them there—can there be any more reason why a woman not a peeress should have a right to choose her representative in the House of Commons, than why a peeress should have a right to be represented in the other House, where the power of voting by proxy might even suggest a favourable distinction? It is clear that a woman has no such right in either case; and that the absence of such right is referable to the fact that in this country, in modern times, chiefly out of respect to women, and a sense of decorum, and not from their want of intellect or their being for any other such reason unfit to take part in the government of the country, they have been excused from taking any share in this department of public affairs.

In either point of view, therefore, whether looking at the true construction of the system of Acts founded upon this part of 2 *Will.* 4. c. 45, or construing the Act of 1867 by itself, excluding, as it does, persons under a legal incapacity, and therefore unaffected by *Romilly's* Act, I am obliged to come to the conclusion that this appeal ought not to prevail.

BYLES, J. I am of opinion that the Revising Barrister was right in expunging this lady's name from the list. I arrive at that conclusion in two ways. First, I think it clear from the words of the Act 30 & 31 *Vict.* c. 102, that the word "man" in section 3 does not include woman, but is confined to a man in the ordinary and proper signification of that word. No doubt the word "man" in a scientific treatise, a work on Zoology, or on fossil organic remains, would include men, women, and children, as constituting the highest order of vertebrate

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animals. It is also used in an abstract and general sense in philosophical or religious disquisitions. But in almost every other connection the word "man" is used in contradistinction to "woman." Certainly this restricted sense is its ordinary and popular sense. Now it is a well known rule in the construction of statutes, that as they are passed for the guidance of the people their language is to be construed in its ordinary and popular sense. But all doubt is removed by reference to the Reform Act, 1832, 2 *Will.* 4, c. 45, where in a similar connection, instead of the word "man" we find the expression "male person;" for another rule of construction is, that Acts *in pari materiâ* are to be construed together and to receive the like construction. And this is not only the general rule of construction, but is by the 59th section of this Act expressly applied to the two Acts now under consideration; for that section expressly enacts that this Act shall be construed as one with the enactments for the time being in force relating to the representation of the people; and though we are not at liberty to construe an Act of Parliament by reference to the debates upon it in the Legislature, yet it is impossible to suppose that Parliament, while dealing with qualifications, and qualifications only, by the variation of a phrase (which at the least *may* convey the same meaning as its predecessor in the Reform Act), intended to admit to the poll another half of the population. Lastly, the consequence of such a construction would be that women would in many cases be admitted to the newly created franchises, but not to the old ones, without any reason for the distinction. Independently, therefore, of what is called Lord *Romilly's* Act, 13 & 14 *Vict.* c. 21, it is plain that the word "man" does not in the recent Reform Act com-

prehend women. But the statute 13 & 14 *Vict.* does not, as it appears to me, create any insuperable difficulty. It enacts, in section 4, that in all Acts of Parliament words importing the masculine gender shall be deemed to include females, unless the contrary be expressly provided. The statute on the appellant's construction would have created the same difficulty if the expression "male person" had been continued to be used. The difficulty, if any, is created by the use of the word "expressly." But the word does not necessarily mean "expressly excluded by words." On the contrary, where that is meant by the statute the statute says so; as in the next sentence, where it is enacted that the word "county" shall include county of a city or town, unless the extended meaning is expressly excluded by *words*. And, accordingly, it is so excluded by section 61 of the last Reform Act. The word "expressly" often means no more than "plainly," "clearly," or the like; as will appear on reference to any English dictionary. And reading the first Reform Act with the last Reform Act, as by the last itself (*a*) we are directed to do, I think it does appear very clearly, and therefore "expressly," that by the word "man" in the last Reform Act is meant a male person only. But supposing that to be otherwise, and that the word "man" in section 3 comprehends both sexes, still the statute excludes in terms all infants, and all who are subject to any legal incapacity. I agree in what has been already said by my Lord and my brother *Willes* on this subject, in whose observations I concur. Women for centuries have always been considered legally incapable of voting for members of Parliament, as much

(*a*) Sect. 59.

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so as of being themselves elected to serve as members. The expression "legal incapacity" in the statute cannot be confined to total incapacity to do any legal act whatever, but must comprehend legal incapacity to do this particular act of voting, though there may be a capacity to do some legal acts, otherwise an alien might vote for a member of Parliament. In addition to all which we have the unanimous decision of the Scotch Judges. I trust their and our unanimous decision will for ever exorcise and lay the ghost of a doubt which ought never to have made its appearance.

KEATING, J. *Mary Abbott* claimed to vote for members of Parliament for the city of *Manchester* in respect of one of the franchises conferred by the 30 & 31 *Vict.* c. 102, s. 3. The claim was disallowed by the Revising Barrister, on the ground that, being a woman, she was not entitled to be placed on the register of voters, and the present appeal is from that decision. The question depends upon the construction of the 3rd section of the Representation of the People Act, 1867, which provides that "every man" of full age "not subject to any legal incapacity," shall (upon compliance with certain conditions) be entitled to be registered as a voter; and it has been contended for the appellant, that when the Legislature enacted that "every man" should vote, they intended thereby to confer the franchise upon women also. Considering that there is no evidence of women ever having voted for members of Parliament in cities or boroughs, and that they have been deemed for centuries to be legally incapable of so doing, one would have expected that the Legislature, if desirous of making an alteration so important and extensive as to admit them

to the franchise, would have said so plainly and distinctly, whereas, in the present case, they have used expressions never before supposed to include women when found in previous Acts of Parliament of a similar character, and have incorporated the Act in which they are now found with other Acts, *pari materiâ*, which confessedly exclude them. But it is said that the word "man" in the present Act, must be construed to include "woman," because by the 13 & 14 *Vict.* c. 21, s. 4, it is enacted that "in all Acts, words importing the masculine gender shall be deemed and taken to include females, unless the contrary is expressly provided." Now all that section 4 of the 13 & 14 *Vict.* c. 21 could have meant by the enactment referred to was that in future Acts words inporting the masculine gender should be taken to include females, where a contrary intention should not appear. To do more would be exceeding the competency of Parliament with reference to future legislation. But, in the present statute, it seems to me the Legislature has clearly expressed the intention not to extend the franchise to women, not only by the absence of express words so extending it, but by the 56th and 59th sections, which place the new franchises as additional, and, as far as possible, upon the same footing as those created by the 2 *Will.* 4. c. 45, with which Act it is incorporated, and which in terms excludes females. Again, the 3rd section of the Act in question expressly applies only to persons "not subject to any legal incapacity" to vote. But it was contended on the part of the appellant, that women were not under any such incapacity, as in ancient times they had voted for knights of the shire, and their rights to do so were recognised by authority. To make good this position we were referred to

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two or three indentures of returns of knights of the shire, for the county of *York, temp. Henry V., Henry VII.*, and *Edward VI.*, which appeared to have been sealed by one or two females, by themselves or attorney. It is, however, not very difficult to suppose that in ancient times, when such proceedings were probably not very regular, a few seals should have been affixed without the legal right of women to vote being recognised; whereas it is absolutely inconceivable that women should ever have possessed the franchise, and yet should have ceased from its exercise for so long a time without a trace being found of any Act to deprive them of their right of voting, or a suggestion in history or elsewhere of any reason why they should have been disfranchised, or of the fact that they ever had been disfranchised. We were also referred to the report in 7 *Mod.* 263, of the case of *Olive* v. *Ingram*, in which it was supposed there were *dicta* favourable to the notion that in ancient times women voted for members of Parliament. The case however, when examined, is an authority the other way. It was a question as to whether a woman could vote in the election of a sexton, and *Lee*, C. J., who is said to have referred to a manuscript case of *Hakewell's* as showing that a *feme sole* freeholder could vote for a member of Parliament, later on distinctly wished it should not be understood that such was his own opinion, and the case was ultimately decided upon the ground that "a sexton's duty being in the nature of a private trust," a woman might vote at the election. According to the report of the case in *Strange*, 1115, the ground of the decision is stated to have been that the office of sexton "did not concern the public;" and the Judges expressly guarded themselves from creating

any precedent or authority for women having a right to vote in matters concerning the public. On the other hand, the opinion of Lord *Coke*, who clearly considered the law to be, that women were disqualified at common law, would, under any circumstances, be of great authority; but, when it is supported by centuries of usage quite in accordance with his statement, the authority becomes such as it would be impossible for the Court to disregard. Mr. *Coleridge*, who ably argued the case for the appellant, made an eloquent appeal as to the injustice of excluding females from the exercise of the franchise. This, however, is not a matter within our province. It is for the Legislature to consider whether the existing incapacity ought to be removed. But should Parliament in its wisdom determine to do so, doubtless it would be done by the use of language very different from anything that is to be found in the present Act of Parliament. I think the Revising Barrister was right, and that his decision ought to be affirmed.

Decision affirmed.

Attorneys—For Appellant, *P. H. Lawrence*, agent for *Blain & Chorlton, Manchester.*

For Respondent, *Johnson & Weatheralls*, agents for *Sudlow & Hinde, Manchester*

CHORLTON, Appellant; RESSLER, Respondent.

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Women are subject to legal incapacity to vote for members for the county. See the last case, *supra*.

THIS also was a claim by a woman of the right to vote in the election of members of Parliament. The only circumstance in which the facts differed from the preceding case was, that this was an application to be placed on the list of voters for the county.

Coleridge, Q.C. (*Pankhurst* with him), for the appellant.

Mellish, Q.C. (*R. G. Williams* with him), for the respondent.

The Court (*a*), however, was of opinion that no sufficient distinction between this case and the preceding one could be supported. Looking to the fact that the whole question of the capacity of women to vote whether for borough or for county members had been argued in the case just decided, and the judgment of the Court had declared women to be under a legal incapacity to exercise the suffrage, the argument could not usefully be repeated.

Decision affirmed.

(*a*) BOVILL, C.J., WILLES, BYLES, and KEATING, JJ.

GREGORY, Appellant; TURNER, Respondent.

Nov. 9.

Practice. Statement of case. Argument on hearing.

COLERIDGE, Q.C. (*T. Chisholm Anstey* with him), for the appellant. This is another claim by a woman to the Parliamentary franchise, but of course it is not proposed to re-argue the main question. It is, however, submitted that the Revising Barrister had no power of himself to strike out the name of the appellant, when no objection had been made (*a*).

[KEATING, J. Where is it stated in the case that no objection was made?]

There is no statement to that effect, but that is the fact.

Per Curiam (*b*), we have only jurisdiction to decide the points reserved, and the one relied on is not reserved.

Appeal dismissed.

Attorneys—For Appellant, *Shaen & Roscoe.*

(*a*) *Smith* v. *James*, *Hopw. & Ph.* 317.

(*b*) BOVILL, C.J., WILLES, BYLES, and KEATING, JJ.

WILSON, Appellant; TOWN CLERK OF SALFORD, Respondent.

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A woman cannot appeal under 6 *Vict.* c. 18, s. 42. A Revising Barrister expunged the names of women duly qualified in all respects except as to sex, though they were not objected to:—*Held*, that whether or not notice of objection was necessary, the claimants, being legally incapacitated, could not appeal.

THE case stated that by sect. 13 of the Act 6 *Vict.* c. 18, the overseers of every township are required to make out a list "of all persons who may be entitled to vote in the election of a member or members to serve in Parliament, &c." In pursuance of this section the overseers of the township of *Salford* placed on the list of voters for the borough of *Salford* the name of *Martha Wilson*, as follows:—

Wilson, Martha	26, *Wilburn Street*	House	26, *Wilburn Street*

Martha Wilson was not objected to, and her qualification, as stated in the list of voters, appeared to be sufficient in point of law.

At a Court held for the revision of the list of voters for the borough of *Salford*, on the 17th of *September*, 1868, the Revising Barrister held that the overseers had mistaken their duty in placing the name of *Martha Wilson* on the list of voters, as she was disqualified on account of her sex, and her name was expunged from the list. The names of 1,340 women who had not been objected to, and whose names and qualifications were appended to a schedule annexed to this case, were, on the same grounds, expunged from the list of voters.

It was contended that as no objection had been made

to any of these persons, the Revising Barrister had no power to expunge their names from the list of voters.

The appeals were consolidated.

If the Court was of opinion that the Revising Barrister was wrong in expunging the names of *Martha Wilson* and those of the persons contained in the schedule from the list of voters, they were to be restored.

J. A. Russell, Q.C. (*R. G. Williams* with him), for the appellant. The question raised by the case is, whether, where the name on the list is *primâ facie* that of a woman, though unobjected to, the Revising Barrister has the power to expunge it.

[BOVILL, C.J. Assume it was an alien ?]

Yes, or assume it was in fact a woman. The presumption drawn from the name is merely *primâ facie*, and may be a mistake. The statute requires notice of objection to be given. Sect. 40 is the one under which the Revising Barrister claimed to act.

He referred to sects. 4—9, 13, 17, 18, 19, of 6 *Vict.* c. 18, to show the care with which the Legislature had endeavoured to secure notice to all interested in making or defeating claims. 28 *Vict.* c. 36, s. 6, requires that the objections be specified.

At the first sitting of the Court it is the duty of the overseer to hand in lists of claimants, with original notices and other documents. Thereupon the Court is constituted to inquire into and try the issues raised by the notices.

[BYLES, J. You contend that if the list is good on

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the face of it, the Revising Barrister has not power to expunge?]

Yes. Here the overseer, in the exercise of a power conferred by Parliament, has put the claimant on the list. Sect. 40 provides for manifest cases of mistake or omission, or requires these to be "proved" to the satisfaction of the Revising Barrister. It is well known that mistakes are made in the spelling of women's names, such as *Frances*, *Jessie*, the alteration of a letter in which would convert them into men's names. Women often bear surnames as first names, and these would not indicate the sex. On the other hand, men frequently bear female names.

[BYLES, J. There was an instance where, in order to secure the succession to property devised to a member of a family who should bear the name of *John*, a prudent parent christened all his daughters *John*, as well as his sons.]

Such instances, though rare, show that if the Barrister can exercise such a power, mistakes may be made.

[KEATING, J. Suppose it appeared on the list "*Martha*, the daughter of *James*," would the Barrister have the power?]

No. The entry might have been made maliciously. The claimants ought to be heard. The same reasoning applies to a foreign name, which *primâ facie* would indicate an alien.

[BOVILL, C.J. A male foreigner may be called *Marie*.]

Can it be contended in either case that the Revising Barrister without objection or any information, it may be, but his own opinion and assumption, may lawfully decide on such rights without warning to the claimant or possessor? *Smith* v. *James* (*a*).

Manisty (with him *Charles Crompton*), for the respondent. This case is stated under sect. 42 of 6 *Vict.* c. 18. That section throughout speaks of "*his* name," "either *himself*," "*he* is desirous to appeal." Is *Martha Wilson* within that clause so as to sustain an appeal? [Stopped by the Court.]

Russell, contra, urged that the objection came too late. The appeal should have been struck out on motion.

BOVILL, C.J. I am by no means disposed to think that there was no answer to be made upon the other section, but upon this particular section (*a*) of the Act of Parliament, the appellant is a person who has no *locus standi* here at all, and is not a person who was contemplated by this Act of Parliament. The Act of Parliament is limited to male persons. *Primâ facie* "Martha" is a female; and, upon the statement of the case, there is no doubt about it, because she is spoken of as "she." Under these circumstances the appeal must be dismissed.

BYLES, J. I am of the same opinion. It is not necessary to give any opinion upon the proceedings of the Revising Barrister; but the moment it is made to appear that the appellant is a woman, it is clear she is not entitled to maintain an appeal under sect. 42.

(*a*) *Hopw. & Phil.* 317; *L. R.*, 1 *C. P.* 138. (*b*) Sect. 42.

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KEATING, J. I also am of opinion that the appellant, being a woman, cannot sustain an appeal under sect. 42; but in deciding this I must not be taken to decide that the Revising Barrister had no jurisdiction under sect. 40 to do what he had done.

Appeal dismissed without costs.

Attorneys—For Appellant, *E. K. Randell*, agent for *Cobbett, Wheeler, & Cobbett, Manchester.*

For Respondent, *Chester & Urquhart*, agents for *Brett, Hankinson, & Kearsley, Manchester.*

BENNETT, Appellant; BRUMFIT, Respondent. (ASHCROFT'S Case.)

Nov. 9.

Practice. Consolidation of appeals.

THIS was a case raising the point whether certain notices of objection should or not state the grounds of objection. One of the parties respondent to the consolidated appeal was a woman, *Ellen Ashcroft*, in favour of whose vote the Revising Barrister had decided. The case, however, raised more than one point, with separate states of facts.

Mellish, Q.C. (*C. Crompton* with him), for the appellant.

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Manisty, Q.C. (*W. T. Charley* with him), for the respondent, referred to *Prior* v. *Waring* (*a*), and *Robson* v. *Brown* (*b*).

Per Curiam (*c*). It has been long settled that to allow of consolidation of appeals the facts of each case must be so similar that a judgment on one of the cases will govern the rest, and if this be not the case with a consolidated appeal, the Court has no jurisdiction to hear it (*d*).

Attorneys—For Appellant, *H. H. Poole*, agent for *W. Pierce, Liverpool.*
For Respondent, *Field, Roscoe, & Co.*, agents for *A. S. Billson, Liverpool.*

(*a*) 2 *Lutw.* 67.
(*b*) *Kea. & Gr.* 45.
(*c*) BOVILL, C. J., BYLES, and KEATING, JJ.
(*d*) By the above decision, though inadvertently, one woman's vote was secured to her.

CHORLTON, Appellant; JOHNSON, Respondent.
(BUNTING'S Case.)

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A leaseholder who possessed the county franchise in respect of a house in a borough (under £10 yearly value) before the 30 & 31 *Vict.* c. 102, is, since that Act, deprived of such franchise by the joint operation of the 2 *Will.* 4, c. 45, s. 25, and 30 & 31 *Vict.* c. 102, s. 59, a house now sufficing, irrespective of its value, to confer on the occupier a borough qualification.

AT a Court held at *Manchester* for the revision of the list of voters for the township of *Ardwick*, in the south eastern division of the county of *Lancaster*, *Henry Bunting*, described on the list of voters for the said township, as follows,

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Bunting, Henry	18, *Ashton Road, Ardwick*	Leasehold houses, term over 60 years	Nos. 33 and 35, *Hyde Street*

was duly objected to by *Thomas Webster*.

It was admitted that the said *Henry Bunting* was lessee, for a term of 999 years, of the messuages or dwelling houses described in the fourth column of the said list of voters, viz., at Nos. 33 and 35, *Hyde Street*.

The claim was for a county vote.

The property in respect of which the name of the said *Henry Bunting* was upon the register for the township of *Ardwick*, is situate within the borough of *Manchester*, but inasmuch as the clear yearly value of each of the said dwelling houses did not amount to £10 (*a*), it was admitted that the said *Henry Bunting* was, before the passing of the Representation of the People Act, 1867, entitled to be on the register of voters for the said township of *Ardwick*, then in the southern division of the said county.

It was also admitted that since the passing of "The Representation of the People Act, 1867," the said *Henry Bunting* would not be now entitled to be put on the list of voters for the south eastern division of the said county (now by the 31 & 32 *Vict.* c. 46, a separate division of the said county) in respect of any new claim for such a qualification as, before "The Representation of the People Act, 1867," entitled him to be on the register of voters, inasmuch as by the last mentioned Act mere occupation

(*a*) And therefore did not, under 2 *Will.* 4, c. 45, confer the right to vote for the borough or city of *Manchester*.

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and payment of rates, irrespective of any amount in value of the house occupied, gives a vote for the borough.

It was objected *that by the 25th sect. of 2 Will. 4, c. 45*, the said *Henry Bunting* was not entitled to have his name retained on the said list of voters for the township of *Ardwick*, each of the said dwelling houses referred to in the said column No. 4, being now sufficient, according to the provisions of the said 3rd section of "The Representation of the People Act, 1867," to confer on the tenant or occupier thereof the right of voting for the said borough of *Manchester*.

On behalf of the said *Henry Bunting* it was contended that, inasmuch as his name was upon the register of voters for the said southern division of *Lancashire at the time of the passing* of the said Representation of the People Act, 1867, the right of the said *Henry Bunting* to have his name retained on such list of voters for the township of *Ardwick*, in respect of his county vote, *was reserved* by the said Representation of the People Act, 1867 (*a*), and that the operation of the said statute was limited and applied only to leaseholders claiming to be placed upon the register after the passing of the said Act.

The Revising Barrister held and decided that the said *Henry Bunting* was not entitled to have his name retained on the list of voters for the said township of *Ardwick*, and the name of the said *Henry Bunting* was therefore erased from the said list of voters for the said township of *Ardwick*.

Other appeals were consolidated.

If the Court were of opinion that the said *Henry*

(*a*) See sect. 56.

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Bunting was not entitled to have his name retained on the said list of voters, for the reasons before given, his name, and the names referred to and set forth in the schedule were to remain erased. But if not of that opinion to be restored.

Mellish, Q.C. (*C. H. Hopwood* with him), for the appellant. The question in this case is whether a person, who before "The Representation of the People Act, 1867," was entitled to a county vote as a leaseholder for house property situated in a borough, insufficient in value to give his tenants a borough vote, is now disfranchised by the circumstance that under that Act his tenants can acquire it. No doubt it is in general true that under the 2 *Will.* 4, c. 45, a leaseholder or copyholder has no vote for the county in respect of a house for which his tenant can acquire a vote for the borough. Thus (sect. 24 of that Act conferring on the leaseholder his county qualification), sect. 25 in substance enacts, that no person shall be entitled to vote for a county in respect of his interest as lessee in any house, &c., or in any land occupied together with a house, &c., where the value would, according to "the provisions hereinafter contained," confer on him or any other person the right of voting for any city or borough. And sect. 59 of "The Representation of the People Act, 1867," which incorporates the Representation of the People and Registration Acts, expressly enacts that, in the above-mentioned 25th section, the expression "the provisions hereinafter contained," shall be deemed to refer to the provisions of "The Representation of the People Act, 1867," conferring rights to vote, as well as to the provisions of the 2 *Will.* 4, c. 45. Under these circumstances it is conceded that

since "The Representation of the People Act, 1867," the county franchise could not be newly acquired in respect of the appellant's leasehold. But the question is whether his franchise having been acquired *before* that Act, the Act operates to disfranchise him. Throughout the Reform Act (*a*), the Legislature has expressed a marked intention that all existing franchises should be preserved. Out of this has arisen the distinction with reference to the county franchise between the position of the owner of freehold property in a borough under sect. 24, and the owner of leasehold or copyhold property in a borough under sect. 25. Under sect. 24 the freeholder's county vote for premises occupied by his tenant was *not taken away*, although the value was sufficient to confer on his tenant a borough vote; whereas, under sect. 25, the leaseholder and copyholder were, in a precisely similar case, *prevented from acquiring* a county vote. Again, the same intention to disfranchise no one is manifested in "The Representation of the People Act, 1867." Sect. 56 of that Act expressly says that "the franchises conferred by this Act shall be in addition to and not in substitution for any existing franchise;" and the only qualification which follows, viz., "but so that no person shall be entitled to vote for the same place in respect of more than one qualification," has no application to the appellant's case. On these grounds, having regard to the frequently expressed intention of the Legislature to disfranchise no one, it is submitted that the appellant should not be disfranchised.

Quain, Q.C. (*Crompton* with him), for the respondent, was not called upon.

(*a*) 2 *Will.* 4, c. 45.

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BOVILL, C. J. I think the Revising Barrister was right, and that it is impossible to draw the distinction for which Mr. *Mellish* contends. If we adopted his view, we must engraft on the words of the 25th section, "no person shall be entitled, &c.," an exception which is not to be found in the enactment.

Decision Affirmed.

Attorneys—For Appellant, *P. H. Lawrence*, agent for *Blain & Chorlton, Manchester.*
For Respondent, *N. C. & C. Milne*, agents for *Sudlow & Hinde, Manchester.*

CHORLTON, Appellant; JOHNSON, Respondent.
(REE'S Case.)

Nov. 9, 10.

It is the intention of the Legislature to keep distinct the procedure in regard to votes for county and borough respectively.

Under stats. 30 & 31 *Vict.* c. 102, and 31 & 32 *Vict.* c. 58, the notice of objection to overseers to a claim by an occupier of land of £12 value is the same as that previously in use for county votes, and need not specify the list on which the claimant appears.

THE case stated that at a Court held at *Manchester*, in *September*, 1868, for the revision of the lists of voters for the township of *Moss Side*, in the south-eastern division of the county of *Lancaster*, *Herman Philip Ree* was described on the register of voters as follows,

Ree, Herman Philip	*Whalley Range, Moss Side*	Freehold house and land	*The Holme, Whalley Range*

and was objected to by *Thomas Webster.*

It appeared that there were the following lists for the said township of *Moss Side.*

1. A list of persons *entitled to vote* in respect of the franchises conferred by or existing previously to the 2nd and 3rd *Will.* 4, c. 45 (being the list upon which the name of the said *Herman Philip Ree* appeared), prepared according to the provisions of the Registration Act 6 *Vict.* c. 18.

2. A list of persons *claiming to vote* in respect of the franchises conferred by or existing previously to the said statute 2 & 3 *Will.* 4, c. 45, and made out pursuant to 6 *Vict.* c. 18, s. 5, and form No. 3 in Schedule (A).

3. A list of persons *entitled to vote* under and by virtue of the Representation of the People Act, 1867, and the Parliamentary Electors Registration Act, 1868, in respect of the occupation of land and tenements within the said townships of the rateable value of £12 and upwards.

4. A list of persons omitted by the overseers from such list of occupiers, and who claim to vote in respect of occupation of lands and tenements within the said township of the rateable value of £12 and upwards, and made out pursuant to the Representation of the People Act, 1867, and the Parliamentary Electors Registration Act, 1868, sect. 17. A copy of each of the above lists was annexed to and formed part of this case.

The name of the said *Herman Philip Ree* appeared only on the list No. 1 above referred to.

The notice of objection given by the said *Thomas Webster*, to the overseers of the said township of *Moss Side*, against the name of the said *Herman Philip Ree*, was in the following form :—

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Notice of Objection.

To the Overseers of the Township of *Moss Side*, in the south-eastern division of the county of *Lancaster*.

I hereby give you notice, that I object to the name of the person mentioned and described below, being retained on the list of voters for the south-eastern division of the county of *Lancaster*.

Christian name and surname of the voter objected to, as described in the list or register.	*Ree, Herman Philip.*
Place of abode, as described	*Whalley Range, Moss Side.*
Nature of qualification, as described	Freehold house and land.
Street, lane, or other like place, where the qualifying property is situate, &c., as described in the list or register.	*The Holme, Whalley Range.*

Dated this 18th day of *August*, 1868.

(Signed) THOMAS WEBSTER,

Of No. 41, *Vine Street, Hulme*, in the city of *Manchester*, on the register of voters for the township of *Crumpsall*.

And the notice to the person objected to was in the form following:—

Notice of Objection.

To *Mr. Herman Philip Ree*, of *Whalley Range, Moss Side.*

Take notice, that I object to your name being retained in the *Moss Side* list of voters for the south-eastern division of the county of *Lancaster*, and I ground my objection on the third column of the register.

And the objection, so far as grounded on the third column, relates to the nature of your interest in the qualifying property, and to the value of the qualifying property.

Dated this 18th day of *August*, 1868.

(Signed) THOMAS WEBSTER,

Of No. 41, *Vine Street, Hulme*, in the city of *Manchester*, on the register of voters for the township of *Crumpsall*.

It was contended, on behalf of the said *Herman Philip Ree*, the person objected to, that the notice to the Overseers and the notice to the said *Herman Philip Ree* were respectively invalid for the following reasons:—

1. That inasmuch as there were two separate and distinct lists of persons entitled to vote for the said division of the county of *Lancaster*, viz., the lists above referred to as Nos. 1 and 3 respectively, and also two separate and distinct lists of persons claiming to vote, viz., the lists above referred to as Nos. 2 and 4 respectively, the notice to the overseers and the notice to the person objected to respectively ought to specify the list to which the objections refer, as directed in the note to form No. 10, in Schedule (B) of 6 *Vict.* c. 18, and in the Representation of the People Act, 1867, ss. 59 and 61, and the Parliamentary Electors Registration Act, 1868, s. 19.

It was contended, on behalf of the objector, *Thomas Webster*, that it was not necessary to specify the list to which the objection referred, and that the said notices of objection respectively were valid, they being respectively in accordance with the forms given in the Schedule (A) to the 6 *Vict.* c. 18, forms Nos. 4 and 5, and the schedule

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to the 28 *Vict.* c. 36, and the objections being to a county vote.

The Revising Barrister decided that both notices were valid, and as the said *Herman Philip Ree* was duly called, and did not appear, he erased the name of *Herman Philip Ree* from the said list No. 1.

Other appeals were consolidated.

If the Court were of opinion that such notices respectively were valid, then the name of the said *Herman Philip Ree* and the names contained and set forth in the schedule would remain erased. But if the Court were of opinion that the said notices, or either of them, were invalid, then the name of the said *Herman Philip Ree*, and the names contained and set forth in the schedule, were to be restored to the list.

Mellish, Q. C. (*Wills* with him), for the appellant. The question for decision is, whether since "The Representation of the People Act, 1867," the notice of objection to a county voter given to the overseers is bad, for not specifying the particular list on which the voter's name appears. In the case of a borough voter, that was long since decided (*a*), but before "The Representation of the People Act, 1867," there was but one list for county voters, and consequently in counties the question could not arise. But the ground of the decision in *Barton* v. *Ashley*, viz., that the objector has no right to impose on the overseers the additional trouble of searching both lists, applies to lists for county voters now just as much as it has always hitherto done to the lists for boroughs. As regards the existence of but one list for county voters, under 6 *Vict.*

(*a*) *Barton* v. *Ashley*, 1 *Lut.* 307; *S. C.*, 2 *C. B.* 4.

c. 18, it appears, by sect. 6, that the list of claimants in any parish, and the part of the register relating to such parish, were to be deemed "*the list* of voters of such parish .... for the county, &c." And the forms of notice of objection to the overseers and county voter respectively (which are the forms followed here), viz., No. 4, Schedule (A), to 6 *Vict.* c. 18, and No. 2, Schedule (A), to 28 & 29 *Vict.* c. 36, both refer to "the *list* of voters for the county," such list being the only list for county voters when these enactments respectively passed. But now, by the 19th section of 31 & 32 *Vict.* c. 58, it is expressly enacted that "in the lists and register of voters for a county," the names of the £12 occupiers in a parish "shall appear in a *separate list*, after the list of voters in such parish ..... otherwise qualified," "and such *separate list* shall be deemed to be part of the *lists* of county voters of such parish, &c.," so that there are now separate lists by express enactment. Moreover, the requirements of the Registration Acts with reference to boroughs have now been, to a considerable extent, imported into counties. Thus, by sect. 30 of "The Representation of the People Act, 1867," the machinery for forming a register in boroughs is introduced into counties, so far as regards the £12 occupation franchise—the overseers being required to make out a list "in the same manner, and *subject to the same regulations*, as nearly as circumstances will admit," as they are required by the Registration Acts to do in the case of boroughs. And by sect. 56, the laws relating to registration are to apply, as nearly as circumstances admit, to the franchises thereby created, and the registers thereby required to be formed. And again, by sect. 59, the Act is to be construed as one with the Registration Acts. Under these circumstances, having

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regard to the existence of separate lists in counties as in boroughs, and to the extent to which the Legislature has shown its intention that the regulations of the Registration Acts as to borough voters should be applied to county voters, it is submitted that the notice of objection given to the overseers should have complied with the regulation existing in boroughs of specifying the list to which the objection refers; and that not having done so, it is bad.

Quain, Q.C. (*C. H. Hopwood* with him), for the respondent. The contention of the appellant in substance is, that the proper form here is No. 10, Schedule (B), of 6 *Vict.* c. 18, but that applies only to boroughs or cities. The sections governing this question are sects. 7 and 17 of that Act, and the statutory form of objection expressly given for counties is No. 4, Schedule (A), the notice to the overseers not being altered, though that to the party has been by 28 *Vict.* c. 36, Schedule (A), No. 2. Reliance has been placed by the appellant on the language of sect. 19 of 31 & 32 *Vict.* c. 58, which speaks of a "separate list;" but, although that is so, it is to be deemed "part of the list of county voters," so that except for the purpose of alphabetic arrangement, it is substantially one list.

[BYLES, J. Suppose the voter is on the £12 list, and on the old list as well?]

No difficulty can arise from that, because the county notice describes the qualification. In the case, the qualification is described as "freehold." That would at once give the overseer a certain intimation as to the list he

should refer to. If the freeholder claiming be on both lists, and both qualifications are objected to, the objector should describe both qualifications. The objection in the case of borough votes refers only to the name of the voter. It gives, therefore, even less information than has been here afforded. Sect. 56 of 30 & 31 *Vict.* c. 102, does not in any way affect the question. It must be read *reddendo singula singulis.* In the case of a borough vote, the objection must be such as has been usual for borough votes. If the case be one of a county vote, then the notice of objection must conform to those used and applicable to county votes.

Wills, in reply. The words of sect. 56 carry on the face of them an admission of complexity, and demand that discretion be shown in so deciding as to simplify matters. The effect of that Act is greatly to multiply the county lists, and to render it exceedingly perplexing to ascertain on which list the name appears. It must be presumed that the Legislature intended to avoid such embarrassment. The course indicated for borough votes is the simplest, and would require the least violation of the language.

Sect. 17 of 31 & 32 *Vict.* c. 58, seems to show how closely it was intended this new qualification and borough votes should be assimilated.

BOVILL, C. J. Throughout the Acts of Parliament relating to the Representation of the People, and the Registration of Voters, a marked distinction has always been made between voters for counties and voters for boroughs, and the registrations and forms with respect to each. The enactments are not only separate in the Act

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of 1832, but there are separate schedules applicable to each, Schedule (H) containing Forms of Lists and Notices applicable to Counties, and Schedule (I) Forms of Lists and Notices applicable to Cities and Boroughs. The forms given by that Act were general, and did not set forth such particulars as would enable the parties or the overseers to direct their attention to the precise matters to be brought under discussion. When the Act of 1843 was passed, the 6 *Vict.* c. 18, the same distinction was preserved both in the enactments and in the schedules. Again, when it was thought right by the Legislature, in the year 1865, by the 28 *Vict.* c. 36, sect. 6, to make a fresh provision in regard to registration, and to effect an alteration in the form of objection to be given to the parties on the register, the enactments referred exclusively to county voters, and made no change in the form of notice to be given to the overseers. It is quite true, as has been said, that there are now separate lists to be made out in the case of the counties much in the same form as in the case of boroughs; but there is nothing that I can find in the Acts (giving full effect to ss. 56 and 59 of "The Representation of the People Act, 1867"), which at all renders it necessary or right that the Court should mix up enactments relating to boroughs with enactments relating to counties, or forms prescribed for the one with the forms intended for the other. If we did so I believe it would lead to great confusion, both as to the enactments and as to the forms. Nor, as it seems to me in the present case, is there the slightest reason for altering that which has been expressly enacted by the Legislature in the Registration Act of 1843: the forms that are given in that Act of the notice of objection to the overseers in

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the case of counties and in the case of boroughs are essentially different. In the case of notice to the overseers, Schedule (A), No. 4, as to counties, the party objecting is obliged to state "The Nature of Qualification as described;" in the other form as to boroughs, Schedule (B), No. 10, no such information is required. A note was appended to this last form, which directed that if there was more than one list of voters, the notice of objection should specify the list to which the objection referred, and if the list contained two or more persons of the same name, the notice should distinguish the person intended to be objected to. It is clear that the notice as to counties being given to the overseers, who themselves make out the lists, if it mention the nature of the qualification described, would indicate as plainly to those overseers the list on which the name would be found as if it had been mentioned by name. In the present case it is important to see whether there is any possibility of mistake or any additional trouble to the overseers likely to arise as suggested by *Maule*, J. . It appears that notice was given to the overseers, who made out the list; that the place of abode of Mr. *Ree* was inserted under "place of abode as described," and under "nature of qualification as described" was inserted "freehold house and land." It is impossible, therefore, that the overseers could have been in the slightest doubt what list was intended. Certainly the description could not be found on the list of persons entitled to vote as £12 occupiers. There was, therefore, no misleading, and there was full information given. I do not, however, rely upon this last point so much as upon the evident intention of the Legislature to keep the forms distinct. I only refer to it as showing that the facts of this case by no means

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warrant or necessitate any different conclusion. I am, therefore, of opinion that, in this case, the decision of the Revising Barrister was right, and this appeal should be dismissed with costs.

BYLES, J. I am of the same opinion. I entirely accede to all that has fallen from the Lord Chief Justice. The list in question is to form "part of the lists of county voters" of the parish: that is expressly enacted. And I can see nothing in the enactment to make this list anything else than a part of the entire list, with a separate alphabetic arrangement. There is nothing to show that the old form of notice of objection is not applicable. I think, therefore, that this appeal should be dismissed with costs.

KEATING, J. I am of the same opinion. If on the introduction of an additional list in the counties an adherence to the old form of notice would tend to mislead the overseers, and not furnish them with sufficient information to discharge their duties, then I think the words of the incorporating sections might be held to be sufficiently large to render it possible and fitting for us to apply the different machinery and forms afforded by the Acts of Parliament to the duties of the overseers, so as to prevent such a result. But here I think that Mr. *Quain* has successfully pointed out that, in truth, the county notice of objection to the overseers would enable them efficiently to discharge their duties under the existing state of things —better, indeed, I should think, than if the notice had been in the form No. 10, Schedule (B). If that be so, we should, by adopting the appellant's contention, be using the comprehensive language referred to, not for the pur-

pose of effectuating, but of, in truth, defeating the object the Legislature had in view. It is observable that in form No. 10 of Schedule (B), the notice to the overseers, it gives only the name of the party, without referring to the qualification, but the overseer is to make out a form in turn, in which he must give the qualification of the voter, which would seem to indicate that the particularising of the qualification of the voter is believed to give, with the rest of the description, full and sufficient information to all the world as to the identity of the party who is objected to. It seems to me that the present notice is amply sufficient as giving the name of the party, the nature and the description of the qualification, the residence of the party, and the situation of the property in respect of which he claims. Therefore I entirely concur that the decision of the Revising Barrister should be affirmed. This being an objection quite beside the merits, and as there is not a suggestion of anything that could have misled any one, I think it ought to be dismissed with costs.

BRETT, J. I have not heard the whole of the argument, but, so far as I have heard, I agree with the rest of the Court. As to the argument to be derived from the 17th sect. of the 31 *Vict.* c. 58, that would be against Mr. *Mellish.* We know that the whole system of preparing the lists was different in the counties and boroughs: in the counties the duty of the overseers was entirely immaterial; they had but to make out the lists from the claims sent in to them; but in the boroughs they had to exercise a discretion. The duty of the overseers was to put on the list all whom they thought ought to be there. If any one was omitted he had to send in

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a claim. Under the new law it appears that the borough system has been introduced into the counties as to £12 occupiers; under these circumstances it seemed but just that any person left out from the list should have the same opportunity of sending in a claim as already existed in boroughs. But then a difficulty arose which was that the 15th sect. of the 6 *Vict.* was not applicable in terms to forms of notice in counties, and the attention of the Legislature was called to the difficulty of adapting the old Registration Acts to the County Registration under the new state of things. It was then enacted (*a*) that as to the mode of claiming the 15th section should be applicable to county votes, but the enactment is confined to the question of claim only, and leaves the mode of objecting just as it was before. Now, before, there were two forms of objection, one the county, the other the borough form of objection. The Legislature has left the old county form just as it was before, and for a good reason, because an objector in the county form does point out to the overseers the list to which the objection applies. The Legislature having had their attention called to the matter, have not altered the form. This objection is in the county form, and, it seems to me, is a perfectly good form of notice of objection to the overseers.

Judgment for the respondent, with costs.

Attorneys—For Appellant, *P. H. Lawrence*, for *Blain & Chorlton, Manchester.*
For Respondent, *N. C. & C. Milne*, for *Sudlow & Hinde, Manchester.*

(*a*) See 31 & 32 *Vict.* c. 58, s. 17.

ALDRIDGE, Appellant; MEDWIN, Respondent.

Nov. 10—17.

In a borough there were two lists of voters, viz., one of occupiers, and one of the possessors of reserved rights under 2 *Will.* 4; on the latter the *only* name was that of *M.*—*M.* gave notice of objection to overseers against the vote of *A.*, but did not, as required by Form No. 10, Sched. (B), of 6 *Vict.* c. 18, specify the list on which *A.* was. The overseers knew, however, and were not misled: *Held*, under the peculiar circumstances, the notice was sufficient.

THE case stated:—At a Court held by the Revising Barrister for the borough of *Horsham*, *Pilfold Medwin* objected to the name of *John Aldridge* being retained on the list of persons entitled to vote in the election of a member for the said borough.

There is only one parish within the said borough, namely, the parish of *Horsham*.

The objector gave in evidence and duly proved the service on the said *John Aldridge* of a notice of objection according to the form No. 11 in Schedule (B.) of the statute 6 & 7 *Vict.* c. 18, and he also gave in evidence and duly proved the service on the overseers of the said parish of a notice of objection to the name of the said *John Aldridge* being retained on the list of persons entitled to vote in the election of a member for the said borough.

The notice served on the said overseers was in the following words:—

"To the Overseers of the Parish of *Horsham*.

"I hereby give you notice that I object to the name of *John Aldridge* being retained on the list of persons entitled to vote in the election of a member for the borough of *Horsham*.

"Dated this 25th day of *August*, 1868.

(Signed) "PILFOLD MEDWIN,

Of *Horsham*, on the list of persons entitled to vote in the election of a member for the borough of *Horsham*,

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in respect of property occupied within the parish of *Horsham.*"

In the borough of *Horsham* it is the duty of the said overseers to make out and publish two separate lists of persons entitled to vote in the election of a member for the said borough, namely, one of persons so entitled to vote in respect of property occupied within the parish of *Horsham* by virtue of the provisions of the statute 2 *Will.* 4, c. 45, and the other of persons (not being Freemen) entitled to vote in such election in respect of any rights other than those conferred by the last-mentioned statute.

The said overseers, accordingly, on the 31st day of *July*, 1868, made out and duly published two such lists, namely, one of persons entitled to vote in respect of the occupation of property within the said parish of *Horsham* by virtue of the said statute 2 *Will.* 4, c. 45, and the other of persons entitled to vote in respect of such reserved ancient rights.

The name of the said *John Aldridge* appeared only in the first mentioned list, and in the following form :—

Aldridge, John	*Lower Beeding*	Buildings and land	*Heron Coppice*

At the time the said two lists were made out and published there was, and for some time previously there had been, only one person entitled to vote in the election of a member for the said borough in respect of such reserved ancient rights, namely, the said *Pilfold Medwin*, and the list made out and published by the over-

seers of persons entitled to vote in respect of such reserved ancient rights contained the name of the said *Pilfold Medwin* only, and such list was in the following form :—

Medwin, Pilfold	*Horsham*	Burgage land	*Carfax*

The overseers duly published the list of persons objected to in the following form :—

Aldridge, John	*Lower Beeding*	Buildings and land	*Heron Coppice*

It was objected on the part of the said *John Aldridge*, that the said notice of objection served on the said overseers was informal and insufficient, inasmuch as it did not specify the particular list to which the objection referred, pursuant to the directions given in schedule (B), No. 10, of the statute 6 & 7 *Vict.* c. 18, and that the said *John Aldridge* ought not to be called on to prove his title to vote.

It was proved on the part of the overseers that they knew perfectly well that the objection was intended to apply only to the list of persons entitled to vote in respect of the occupation of property by virtue of the statute 2 *Will.* 4, c. 45, and not to the said list of persons entitled to vote in respect of such reserved ancient rights as aforesaid, and that they, the said overseers, were not in any manner misled by the said notice.

The Revising Barrister held, upon the facts proved, that the notice of objection served on the said overseers was sufficient, and called upon the said *John Aldridge*

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to prove his title to vote in respect of the occupation of property within the said parish by virtue of the said statute 2 *Will.* 4, c. 45, and, on his failing to do so, he expunged his name from the list of such occupiers.

The question for the opinion of the Court was whether upon the facts stated the said notice of objection was or was not sufficient in law.

If the Court were of opinion that the notice was insufficient, the name of the said *John Aldridge* was to be restored to the list, and the register to be amended accordingly, otherwise his name is to remain expunged.

Other appeals dependent on the same facts were consolidated.

Pickering, Q.C., for the appellant.

Under the statute 2 *Will.* 4, sect. 33, certain rights of freemen and others to vote in boroughs were reserved, which rendered separate lists, as required by section 44, necessary of the distinct classes of voters. By 6 *Vict.* c. 18, sect. 17, the practice as to notice of objection is now regulated. The ground of appeal is that form 10, schedule (B), the notice to the overseers, has not been followed. This Court has insisted on the statute being obeyed with strictness. It matters not that the case may be one in which little or no difficulty may occur to the overseers. Their local knowledge might even, if necessary, set right mistake or incorrectness, but that is no answer to this objection, which is founded on the fulfilment of the requirements of the statute, the object of which is to secure uniformity. In *Barton* v. *Ashley* (*a*), *Maule*, J.,

(*a*) 1 *Lutw.* 312; *S. C.* 2 *C. B.* 4.

said, "It is true that by some additional labour, the overseers, with an imperfect notice of objection to guide them, may come to the same result as if they had been served with a notice in perfect compliance with the form in the schedule, but it was the intention of the Act to save them that trouble."

[BYLES, J. There might be two persons named *John Aldridge*, one on each list, each in point of fact occupying buildings and land?]

That no doubt illustrates the difficulty.

Keane, Q.C. (*Lumley Smith* with him). It would be remarkable if the statute should require assistance to the overseer where he wants none. The case finds that the overseer perfectly well knew who was intended—that he was not in any way hindered or misled. It could hardly be otherwise, as there is only one name on the list of reserved rights, and that is the objector's. What can it matter to the appellant if the overseer do not complain? It is to the latter, if any one, a grievance, and as he does not feel it one, it is none to anybody.

In *Huggett* v. *Lewis* (*a*), a notice of objection to overseers against a claimant whose name was on the occupiers' list only, was held sufficient in these terms—"on the list of persons entitled to vote under the Reform Act." In that case, on the argument, *Maule*, J., said, "The notice of objection to overseers seems to be a thing between the objector and the overseer. I do not see what right a voter has to take the objection."

(*a*) *Kea. & Gr.* 1; *S. C.* 15 *C. B.* 245.

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In *Jones* v. *Innons* (*a*), where a notice of objection to a county voter was addressed to the overseers of the parish or township of *B.* without naming the county, it was held a sufficient notice, as the evidence proved it to have reached the overseers in due time. In *Goodsell* v. *Innons* (*b*), the Court treated it as arguable, though they did not decide, that overseers might waive objections of a formal character. If the object is that all necessary information shall be given, that has been done.

[BOVILL, C. J. The same might have been said in *Barton* v. *Ashley*. Must we not follow the decisions of this Court?]

There is in fact only one list; for a single name cannot constitute a list.

Surely this is a case within the healing effect of section 101, that no misnomer or inaccurate description of any person described in any list, in any notice required by the Act, should prevent or abridge the operation of the Act with respect to such person, if so denominated as to be commonly understood.

[BRETT, J. The objection is not that you have misdescribed the list, but that you have not described it at all.]

In *Lambert* v. *St. Thomas* (*c*), where a notice of objection to a county voter mentioning the list of voters

(*a*) *Kea. & Gr.* 21; *S. C.* 17 *C. B.* 291.

(*b*) *Kea. & Gr.* 24; *S. C.* 17 *C. B.* 295.

(*c*) 2 *Lutw.* 222; *S. C.* 12 *C. B* 642.

omitted the words "for the county," it was held to be good by force of section 101.

A strict literal adherence to the enacted forms is discouraged by *Bright* v. *Devenish* (*a*). It is clear that the cases permit some discretion to the Revising Barrister in such matters.

Pickering, Q.C., in reply. The facts of *Bright* v. *Devenish*, and of *Tudball* v. *Town Clerk of Bristol* (*b*), which it affirmed, are very different. There the too close adherence to the form had the direct effect of misleading or causing difficulty. Yet it is to be remarked that no one suggested that the defects came within section 101. Here are two lists. The Court will take care that the general rule is observed and not impaired by exceptions founded on slight differences of fact. The practice cannot vary with the numbers of two, ten, or twenty names on the one list, and hundreds on the other.

Cur. ad. vult.

BOVILL, C. J. The question in this case was whether a notice of objection to the overseers, which did not specify the list upon which the voter's name appeared, was sufficient. It is true the statute directs that the list shall be so specified, and so provides by a note appended to form No. 10, in schedule (B), to the Registration Act, 6 *Vict.* c. 18, and it has been decided in this Court in the case of *Barton* v. *Ashley*, that it was necessary the notice should specify the list. The same rule was laid

(*a*) *Hop. & Ph.* 373; *S. C.*, *L. R.*, 2 *C. B.* 102.

(*b*) 1 *Lutw.* 7; *S. C.*, 5 *M. & G.* 5.

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down by the Court in respect to the description of the objector in *Crowther* v. *Bradney* (*a*). By sect. 101 of 6 *Vict.* c. 18, an inaccurate description in any notice required by the Act is not to prevent or abridge the operation of the Act, provided the person intended be so denominated as to be commonly understood. The circumstances of this case are peculiar, there being a list, properly so called, of voters entitled to the occupation franchise, and there being also a paper which in one sense may be called a list of voters entitled to vote in respect of reserved rights, though in point of fact it contains the name of only one such voter, viz., the objector himself—the respondent. This circumstance had probably existed for some time—at all events the case found that the overseers knew perfectly well that the objection was intended to apply only to the list of persons entitled to vote in respect of the occupation of property, and not to the paper containing the name of *Medwin*, the respondent alone. We feel some difficulty in coming to the conclusion that this notice did sufficiently specify the list, but under the peculiar circumstances of the case, and looking to the evidence as to the knowledge of the overseers, we cannot say that there was not sufficient to warrant the Revising Barrister in coming to the conclusion that the notice did sufficiently specify the list on which the voter's name appeared. He has in effect found that the description was such as would be commonly understood to apply to the list of occupiers, and we cannot say that he is wrong upon these facts, or hold that, as a matter of law, the notice was bad. The decision must be affirmed, but

(*a*) *Hop. & Ph.* 63; 15 *C. B., N. S.* 536.

without costs, for the case is peculiar, and certainly not one to form a precedent.

Decision affirmed without costs.

Attorneys—For Appellant, *Baxter, Rose, Norton & Co.*

For Respondent, *T. H. Strangways*, agent for *P. Medwin, Horsham.*

MOON, Appellant; ANDREW, Respondent.

Nov. 10.

THE case stated:—At a Court held at *Falmouth*, before the Revising Barrister appointed to revise the list of voters of the borough of *Penryn*, for the revision of the list of voters for the said borough, objection was made to the name of *William Andrew*, as follows:—

"To Mr. *William Andrew*, of *Porham Street*,
"in the town of *Falmouth*.

"I hereby give you notice that I object to your name being retained on the list, for the town of *Falmouth*, of persons entitled to vote in the election of members for the borough of *Penryn*.

"Dated this 24th of *August*, 1868.

"CHARLES MOON,

Of *St. Thomas Street, Penryn*, on the list of voters for the borough of *Penryn*."

The parliamentary borough of *F.* and *P.* consists of four parishes, the town of *F.*, and the municipal borough of *P.* Each of these six places has separate overseers, rates, and lists of voters. An objector in a notice of objection described himself as on the list of voters for "the *borough of P.*," having previously in the body of the notice used the words "borough of *P.*" to designate the parliamentary borough. *Held*, that the words "borough of *P.*" referred to the municipal borough, and that (there being no parish of *P.*) this description was sufficient, although, in the 6 & 7 *Vict.* c. 18, sched. (A), No. 5, the word "parish" only is used.

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The borough of *Penryn* for parliamentary purposes consists of six several places, having separate overseers and rates, and separate lists, namely, "the borough of *Penryn*," "the parish of *St. Gluvias*," "the parish of *Mylor*," "the town of *Falmouth*," "the parish of *Falmouth*," and "the parish of *Budock*."

In the first of these places there were two separate lists published by the overseers of the poor, one containing the scot and lot voters, and the other the £10 householders and the inhabitant occupiers. This latter list included all the names on the scot and lot list.

The name of *Charles Moon*, the objector, appeared on both these lists, and his residence also appeared thereon as mentioned in the notice.

The Revising Barrister held that the description of the objector, *Charles Moon*, as being "of *St. Thomas Street, Penryn*, on the list of voters for the borough of *Penryn*," did not sufficiently describe on which of the six lists of the parliamentary borough of *Penryn Charles Moon's* name was to be found. He therefore decided that the notice was bad, and retained on the list the name of the said *William Andrew*.

If the Court of Common Pleas should be of opinion that the notice of objection was invalid, the register was to remain without amendment, but if the Court should be of opinion that the notice was not invalid, then the name of the said *William Andrew* was to be expunged from the register.

O'Malley, Q.C. (*Horne Payne* with him), for the appellant. The notice is sufficient, and indeed strictly correct. The objector is described as "on the list of voters for the *borough* of *Penryn*." Borough there

means municipal borough, although in the earlier part of the notice it is no doubt used more loosely to designate the parliamentary borough. For, in popular parlance, the parliamentary borough is frequently called the borough of *Penryn*, as indeed in this special case. But in strictness the only parliamentary borough is the borough of *Penryn* and *Falmouth*, see 2 & 3 *Will.* 4, c. 64, schedule (O), and "The Boundaries Act, 1868" (*a*). Construing borough, then, to mean municipal borough, is not the form in the 6 & 7 *Vict.* c. 18, schedule (A), No. 5, sufficiently adhered to? It is submitted that it could not have been adhered to with greater strictness. It is true that in the statutory form the word used is not "borough" but "parish," but there is no such thing as a "parish" of *Penryn*. And in *Gadsby* v. *Warburton* (*b*), the description of an objector as "on the register of voters for the *township* of *M.*" was held correct, notwithstanding the use of the word "parish" in the form. He also referred to *Bright* v. *Devenish* (*c*).

The Court then called on

T. Atkinson (*Lumley Smith* with him), for the respondent. The words "borough of *Penryn*" must be taken to refer to the parliamentary borough, and, if so, the notice is clearly bad. Within the parliamentary borough there are six places having separate lists. And the Court will not impose on the person objected to the burden of searching several lists in several places. *Crowther* v. *Bradney* (*d*). It is argued that the words

(*a*) 31 & 32 *Vict.* c. 46, s. 4, and sched. 1.

(*b*) 1 *Lutw.* 136; 7 *M. & G.* 11.

(*c*) *Hop. & Ph.* 373; *L. R.* 2 *C. B.* 102.

(*d*) *H. & P.* 63.

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"borough of *Penryn*" must refer to the municipal borough. But the same words occur in an earlier part of the notice, there beyond all doubt referring to the parliamentary borough. And if there be doubt as to their meaning here, that of itself is fatal to the notice. A document of this character should be clear and unambiguous. And the Court will not aid it by construing the same words differently in different parts of it. There could be no difficulty in framing this notice unambiguously. "On the list of voters for the borough of *Penryn* within the parliamentary borough of *Penryn* and *Falmouth*" would have been free of ambiguity and unobjectionable. Moreover, there are two lists within the municipal borough.

[BRETT, J. That is not the point raised by the Revising Barrister.]

O'Malley, Q.C., was not heard in reply.

BOVILL, C. J. I am of opinion that the decision of the Revising Barrister must be reversed. It is true that in the earlier part of the notice, the words, "borough of *Penryn*" are used, as is plainly shown by the context, to denote the parliamentary borough of *Penryn* and *Falmouth*. For there the notice is expressly speaking of persons "entitled to vote in the *election of members* for the borough of *Penryn*," which shows beyond doubt that the reference is to the parliamentary borough. But, on the other hand, in the latter part of the notice, where it speaks of "the *list* of voters for the borough of *Penryn*," I think it equally plain that the old municipal borough is referred to. For the notice in this latter

part speaks of the *list* for the borough of *Penryn*, and it has previously spoken of the *list* for the town of *Falmouth*, and whereas there is a *list* for the town of *Falmouth*, and a *list* for the municipal borough of *Penryn*, there is no *list* for the parliamentary borough of *Penryn* and *Falmouth*. Under these circumstances I think the requirements of the statute have been complied with.

BYLES, J. I quite agree. The expression "borough of *Penryn*" in the latter part of the notice refers, in my judgment, to the ancient borough; and, that being so, the description of the objector is in accordance with the statute.

KEATING, J., and BRETT, J., concurred.

Decision reversed.

Attorneys — For Appellant, *Baxter, Rose, Norton & Co.*

For Respondent, *Travers, Smith & De Gex.*

BENNETT, Appellant; BRUMFITT, Respondent.

(ALDERSON'S Case.)

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A person placed by the overseers, pursuant to sec. 30 of 30 & 31 *Vict.* c. 102, on the list of £12 occupiers, is not a "claimant" within the exception in sec. 6 of 28 *Vict.* c. 36, and is therefore entitled under that section to a specific statement of the grounds of objection.

THE case stated as follows:—One, *John Alderson*, was inserted in the list, published by the overseers of the township of *Bootle-cum-Linacre*, in the south-west division of *South Lancashire*, of persons entitled to vote, as the occupier, as owner, or tenant of lands or tenements within the said division of the county, of the rateable value of £12 or upwards, in respect of a house occupied by him in *Derby Road*, in the said township.

Richard Bennett (the appellant), objected to the name of the said *John Alderson* being retained on such list.

The facts were as follows:—

A notice of objection against the name of the said *John Alderson* being so retained, had been duly served upon the overseers of the said township by the appellant, but the notice of objection, which was also duly served upon the said *John Alderson* by the said appellant, was as follows:—

"To Mr. *John Alderson, Derby Road.*

"I hereby give you notice that I object to your name being retained in the list of voters for the south-west division of the county of *Lancaster*.

"Dated this 17th day of *August*, 1868.

(Signed) "RICHARD BENNETT,

Of 18, *Upper Bean Street*, in the township of *Everton*,

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in the county of *Lancaster*, on the register of voters for the parish of *Liverpool*."

It was objected, on behalf of the said *John Alderson*, that such notice of objection was bad in law, because the ground or grounds of objection were not specifically stated therein, by naming the column or columns of the list on which the objector grounded his objection, pursuant to the sixth section of "The County Voters Registration Act, 1865."

On the other hand, it was contended by the appellant that the form of notice of objection given in No. 2, schedule (A), of "The County Voters Registration Act, 1865," clearly pointed out that the notices wherein the grounds of objection were required to be specifically stated, were only those to be given to parties already on the register, and that although the list of £12 occupiers might not strictly be a "*list of claimants*," it was in the nature of a list of claimants, whilst it was *most certainly not* "*the Register*," and that therefore a general notice of objection given to such occupier in the form directed by the seventh section of the principal Act (*a*), was a valid notice of objection. The Revising Barrister decided that the said *John Alderson* was not a claimant within the meaning of "The Representation of the People Act, 1867," and the Registration Acts therein referred to, and that therefore the said general notice of objection was bad, and he retained the name of the said *John Alderson* upon the list of voters.

If the Court were of that opinion, the list was to stand without amendment, but if of a contrary opinion, then the list was to be amended by expunging the name of the said *John Alderson*.

(*a*) 6 *Vict.* c. 18.

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Other appeals were consolidated with this.

M'Intyre (*W. T. Charley* with him), for the appellant. The notice given is sufficient, as against £12 occupiers. The objection is based on 28 *Vict.* c. 36, sect. 6, which continues the old form of notice to county voters in the case of *claimants*, but in all others, requires the grounds of objection to be specifically stated. Prior to that Act, and therefore also to the addition under "The Representation of the People Act, 1867," of the class of £12 occupiers, the county lists were those prepared under 6 *Vict.* c. 18. First, the overseers received from the clerk of the peace, along with directions for publication of the notice prescribed, the old register. That was, in fact, one list. Then, under sect. 4, all persons not on the register, and all who being on, did not retain the same qualification, or desired to make a new claim, were required to give the overseer notice in writing to that effect. The overseers then, under sect. 5, were required to make a list of all such *claimants*. The 28 *Vict.* c. 36, sect. 6, referred to above, is to be construed with reference to these two lists, as they virtually were, viz., the old register and the list of claimants.

By 6 *Vict.* c. 18, sect. 6, these two lists are to be deemed the list of voters for the county for the purposes of registration.

The statute 30 & 31 *Vict.* c. 102, sect. 30, creates a third list. Sects. 56 & 59 incorporate the former Acts relating to the Representation of the People and the Registration Acts, and the question is, whether the form under 6 *Vict.* c. 18, or that under the 28 *Vict.* c. 36, is to be adopted. The last is intended to be confined to those who have already established their right to vote;

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the 30 & 31 *Vict.* c. 102, being passed after the 28 *Vict.* c. 36, if the Legislature had intended that the particular notice should be given, it would have expressly required it. The 28 *Vict.* c. 36, sect. 6, requires virtually three things to be specified, as objected to, viz., the nature of interest, the value, or both the nature and value. Sect. 8 requires each to be treated as a separate objection, and enlarges the power as to costs. But in the case of a £12 occupier, the proof would necessarily be simple, and these provisions inapplicable. The respondent was, in effect, only a claimant. The procedure of the overseers is, by sect. 30 of 30 & 31 *Vict.* c. 102, and 31 & 32 *Vict.* c. 58, sect. 17, to be virtually the same as in boroughs.

[BOVILL, C.J. You must take it as decided yesterday, by *Chorlton* v. *Johnson* (*a*), that we hold that the forms applicable to county votes must be followed in respect of these £12 occupiers.]

He referred to sect. 17 of 31 & 32 *Vict.* c. 58.

[BRETT, J. That was intended to incorporate sect. 15 of the principal Act, so as to provide for omitted claims.]

The overseers, in effect, claim for the votes. They put the names on, and must renew them from year to year.

C. Crompton (with him *Mellish*, Q.C., and *Lewis*

(*a*) *Ante*, p. 54.

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Williams), for the respondent. Sect. 6 of 28 *Vict.* c. 36, really determines the matter. It distinctly provides that except in the case of claimants, the notice of objection must be special in its terms. *Alderson* cannot be called a claimant.

[He was stopped by the Court.]

BOVILL, C.J. I am of opinion the Revising Barrister was right in holding that this general notice was insufficient, because the grounds of objection ought to have been specifically stated. The express object of the Registration Act of 1865, with regard to county voters, was to require the objection to be specifically stated in every case, except that of persons described as claimants; and looking to the general scope of the enactment, and the course of legislation as to the lists of voters, it seems to me that *Alderson* was not a claimant. If the overseers had inserted his name in the borough, instead of the county list, he clearly would not have been a claimant. The overseers have the means of knowing who are *primâ facie* entitled to be placed on the register. And the duty they already performed in boroughs of putting down the names of those they supposed to be entitled, was by the Act 30 & 31 *Vict.* c. 102, sect. 30, extended to county voters in the case of the class of £12 occupiers created by that Act. There is, besides, an express enactment, with regard to what I may term the list of voters for the county. Under the earlier Act, it consisted of the register and the list of voters who sent in their claims. When "The Representation of the People Act, 1867," introduced a new class of persons, there being a doubt as to how far the power of sending in the claims

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of persons omitted was incorporated, the Registration Act of 1868, in the 17th section, expressly made the same provision as to those claims as exists in the case of boroughs; and in the 19th section, it was enacted that "in the list and register of voters for a county, the names of the persons on whom a right to vote for a county in respect of the occupation of premises in such parish or township is conferred by 'The Representation of the People Act, 1867,' shall appear in a separate list after the list of voters in such parish or township otherwise qualified, and such separate list shall be deemed part of the lists of county voters of such parish or township, and shall be annually made anew by the overseers of such parish or township." When that Act was passed, the list of voters in the county consisted of the same list which had previously existed, with the additional list of the £12 occupiers. But it nowhere says that the list of those claiming to be placed on the £12 list is to be deemed part of the list of voters. The very fact of this express enactment declaring the list made out by the overseers to be part of the list of voters for the county, and yet being entirely silent as to persons omitted who might send in claims, seems to me to show that these last only are to be regarded as claimants strictly so called. The objection to persons who are strictly of that class in the case of boroughs, (which is, no doubt, a general form of objection,) was not for the purpose of compelling them to prove their qualification. That they were bound to do, before the Revising Barrister could put their names on the list; the object of the notice was to entitle the objector to be heard in opposition, for unless he gave notice, he was not so entitled. The object of the Legislature was, as it seems to me, as far as pos-

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sible, to put the making out of the list as to the £12 occupiers in counties on the same footing as the list of £10 occupiers in boroughs. By the 59th section of "The Representation of the People Act, 1867," that Act is to be construed as one with the enactments in force relating to the Registration Acts, and we must endeavour, as far as possible, to put a consistent interpretation on the whole. The particular question before us arises on the 6th section of "The County Voters Registration Act, 1865." "Any notice of objection to any person on the list of claimants for any parish or township, may be given according to the provisions of the 7th section of the principal Act," (*i.e.*, a general notice,) "but with that exception no notice of objection given under the provisions of the said 7th section, other than a notice to the overseers, shall be valid, unless the ground or grounds of objection be specifically stated therein." We ought to give effect to this very useful section if we can, and it seems to me it is applicable to the present case. If so, is *John Alderson* in the position of a claimant? I am clearly of opinion that he is not. The case, therefore, comes within the exception of the 6th section of "The Registration Act, 1865," and the ground must be specifically stated. It is quite true that after the general enactment, that the ground of objection shall be specifically stated, there are some words defining what shall be a sufficient compliance with that enactment; while in some respects the provisions are not applicable to this particular case; but that is no sufficient reason why we should reject the whole; especially when the particular enactment is clear and distinct, that as to claimants the notice may be general, but in every other case no notice shall be valid unless the grounds are stated.

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Mr. *M'Intyre* contended that the terms of the notice, No. 2. must control the enactment. It seems to me it has no such operation. *John Alderson* was placed on the list by the overseers, and is not, in any sense or shape, in the position of a claimant, or a person on the list of claimants. That being so, in my opinion the Revising Barrister was perfectly right in the decision which he pronounced in this case.

BYLES, J. I am of the same opinion. I shall not trust myself to make any remarks which are not strictly applicable to the exact question before us, because the various enactments are such as to expose both voters and revising barristers and this Court to many difficulties of construction, in which they may be easily entangled. I think Mr. *Crompton* was right in saying that this case depends on the construction to be put on the 6th section of "The County Voters Registration Act, 1865." *John Alderson*, this voter, had been put on the list by the overseers. He had never claimed at all; and he was not a claimant within the first part of the 6th section. If he had been a claimant, the first part of the 6th section would have applied to him; but not being a claimant, and then not being within the exception in sect. 6 —for the statute expressly says that shall be the only exception—he is within the other words of the clause, which require the grounds of objections to be specifically stated. The only difficulty that presented itself to my mind during the discussion was the form of the notice, No. 2, which undoubtedly in terms is only applicable to parties on the register. But the particular notice here necessary is exacted by sect. 6, not by the terms of the notice, No. 2. I have, therefore, come to

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the conclusion that the Revising Barrister was clearly right.

KEATING, J. I entirely agree with my brother *Byles*, that it is not very easy to find one's way through the many enactments with reference to the preliminaries for the exercise of the franchise. I certainly have entertained considerable doubt in this case—not as to whether *John Alderson* was a claimant in terms, because in terms he is not a claimant—but I have entertained doubts, which I cannot say are altogether removed, as to whether he was not in the nature of a claimant within the meaning of the enactments of this Act. The rest of the Court, however, entertain a very clear opinion the other way; and I cannot say that my doubts are sufficiently strong to justify me in dissenting.

BRETT, J. It seems to me that the matter resolves itself into three questions. First, what was the law as to notices of objection in counties at the time of the passing of "The Representation of the People Act, 1867," and "The Registration Act of 1868?" Secondly, has the law been altered by either one or both of those statutes? Thirdly, if not, how is the old law to be applied to the present case? At the time of passing those statutes, the law as to notice of objection in counties was regulated by the 6 *Vict.* c. 18, and the 28 *Vict.* c. 36. Taking these two statutes together, the notices of objection in counties were to be given in this manner. Persons who were on the old register were entitled to specific notice of objection; but persons who claimed, and whose names were put into a list of claimants by the overseers, were to receive only a general notice of objection. By

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the first part of sect. 6 of the latter Act, any notice of objection to any person on the list of claimants was to be according to the provisions of the 7th section of the principal Act. In all other cases there was to be a specific objection. The only cases at that time known were people on the old register, and new claimants. Therefore, the form in the schedule is consistently drawn to apply to the case of all persons other than claimants, *i.e.*, to all persons on the register. That being the state of the law at the time of "The Representation of the People Act, 1867," and "The Registration Act of 1868," is there anything in either of those Acts which alters the law? It was said in the argument that there was, by reason of the 17th section of "The Registration Act," and I stated why I thought the 17th section did not apply, and the Legislature had not intended to alter the mode of giving notices of objection in counties. Mr. *M'Intyre* also relied on the 19th section of the same Act, but that seems to me to apply only to the mode of making up the list, and not to deal with the notices of objection. He also referred to "The Representation of the People Act, 1867," but I do not think that that alters the terms of the notices of objection in counties. The Legislature appears to have declined to deal with them. Then, how is the old law to be applied as to the £12 voters. They, in my opinion, are not claimants; they send in no notice of claim. An act is done without their intervention by the overseer exercising his discretion. On the other hand, there is to be a class of claimants under the new law. All persons omitted from the list by the overseers are to send in a claim; and they, therefore, will be claimants. Then the 56th section of 30 & 31 *Vict.* c. 102, declares that the

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pre-existing Registration Acts are to be applicable to the new state of things. How are you to apply those? If the construction we put on the 6th section of the 28 *Vict.* c. 36, be correct, claimants are to be the only persons to whose case a general notice of objection is suitable; but the class we are discussing, I have shown, are not claimants, and are therefore entitled to a specific notice of objection. Though it may not be possible to give the notice in the exact form in the schedule, we must look at the Registration Acts, and the new state of circumstances as nearly as may be, and require a specific notice, as similar as circumstances will allow to that described in sect. 6 of the 28 *Vict.* c. 36. I therefore think the Revising Barrister was right in saying the notice of objection was insufficient.

Judgment for respondent, without costs.

Attorneys—For Appellant, *Gregory, Rowcliffe & Co.*, agents for *H. Bremner, Liverpool.*
For Respondent, *Field, Roscoe & Co.*

JONES, Appellant; PRITCHARD, Respondent.

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An objector, in his notice of objection, described his place of abode as "*Bronygraig*" (without other addition). *Held*, that such a description is not bad in law on its face, but that it is matter of evidence for the Revising Barrister whether it in fact gives the requisite information.

THE case stated that, at a Court held at *Corwen*, in the county of *Merioneth*, on the 14th *September*, 1868, *Walter Butler Clough Jones* objected to the name of *Thomas Pritchard* being retained on the list of persons entitled to vote, in respect of property situate within the parish of *Llandrillo*.

The notice of objection was duly served, and was in the following form:—

"To Mr. *Thomas Pritchard*.

"Take notice that I object to your name being retained in the *Llandrillo* list of voters for the county of *Merioneth*.

"Dated the 18th day of *August*, in the year of our Lord, 1868.

(Signed) "WALTER BUTLER CLOUGH JONES,
Of *Bronygraig*, on the register of voters for the parish of *Corwen*."

The notice of objection to the overseers was duly served and published, and was in the following form:—

"To the Overseers of the Parish of *Llandrillo*.

"I hereby give you notice that I object to the name of the person mentioned and described below being retained on the list of voters for the county of *Merioneth*.

"Dated the 18th day of *August*, 1868.

(Signed) "WALTER BUTLER CLOUGH JONES,
(Place of abode) "*Bronygraig*."

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Pritchard, Thomas	*Plassdinan*	Rateable value above £12	*Plassdinan*

The said *Walter Butler Clough Jones* is described on the register as residing at *Plasyndre, Corwen*, but he has left that house, and for some months past he has resided at *Bronygraig*, distant about one mile from the town of *Corwen*.

It was argued on the part of the said *Thomas Pritchard*, that the description of the place of abode of the objector was insufficient on its face, and could not be deemed, in point of law, a good description of the place of abode without adding *Corwen*, the nearest town to the place called *Bronygraig, Corwen*, being also the name of the parish.

On the part of the objector, it was argued that evidence was admissible to shew that the notice gave reasonable information to the person objected to. It was accordingly proved, and admitted that if *Thomas Pritchard* went to *Corwen*, the town and parish in which the qualifying property of the objector is situated, the objector would be easily found, on inquiry there, and that *Bronygraig* is well known there, and could be found without any difficulty.

The Revising Barrister decided that the notice was bad in law on its face, and could not be affected by such evidence, or by the fact that, under the particular circumstances, the notice gave the requisite information.

The qualifications of the said *Thomas Pritchard* were inquired into, and if the Revising Barrister had been of opinion that the notices of objection were valid, he would have expunged his name from the list.

If the Court was of the opinion that this decision as to the insufficiency in law of the description of the place of abode of the objector was wrong, the name of the said *Thomas Pritchard* was to be expunged from the register.

Dowdeswell, Q.C., for the appellant. The decision of the Revising Barrister was wrong. The case is governed by *Thackway* v. *Pilcher* (*a*). That case shows that a notice such as this is not bad on its face; and that the question whether or not it gives sufficient information, is one on which the Revising Barrister must take evidence, and decide on the facts.

R. E. Turner, for the respondent. In *Thackway* v. *Pilcher* (*a*), the Court say the matter is one of fact for the Revising Barrister, as to which his finding is conclusive. Here the barrister has found the notice insufficient, and the Court will not disturb his finding.

[BOVILL, C.J. The barrister decides that the notice is bad *in law* on its face.]

Woollett v *Davis* (*b*) supports him in that view. *Wilde*, C. J., in delivering the judgment of the Court, there said: "We are of opinion . . . . that no notice can be deemed in the form, or to the effect required by the statute, which does not in itself contain a sufficient statement of the place of abode. We think that it is contrary to the meaning and intent of the Legislature, that the party receiving the notice should be compelled to

(*a*) 1 *Hop. & Ph.* 378; S. C. *L. R.* 2 *C. P.* 100.

(*b*) 4 *C. B.* 120; S. C. 1 *Lutw.* 612.

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take trouble, and to resort to other sources than the notice itself, in order to obtain the necessary information as to such place of abode." Here, on the face of the notice, the statement is insufficient.

Dowdeswell, Q.C., was not heard in reply.

BOVILL, C.J. In this case the decision of the Revising Barrister was, that the notice was bad in law on the face of it, and could not be affected by the evidence offered, or by the fact that under the particular circumstances it gave the requisite information. I think that view cannot be supported. A description, on the face of which the sufficiency is doubtful, may nevertheless, in fact, give the requisite information. Its sufficiency is in such a case matter of evidence. On this finding, we must assume the notice did, in fact, give the requisite information; and, as we cannot say the notice is bad on its face, the decision of the Revising Barrister must be reversed.

BYLES, J. I am of the same opinion. If the objector had described his place of abode as *Alton Towers* or *Blenheim*, that would, according to this decision, be a bad description, and one which no evidence could make good.

KEATING and BRETT, JJ., concurred.

Decision reversed.

Attorneys—For Appellant, *McLeod & Cann*, agents for *J. H. Jones, Portmadoc.*

For Respondent, *C. Wilkin*, agent for *D. Pugh, Dolgelly.*

JONES, Appellant ; JONES, Respondent.

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In the qualification column of the list of county voters a lease for life of a house and garden was described as "leasehold house and garden." *Held*, that this description was sufficient, and, if not strictly accurate, was within 6 *Vict.* c. 18, s. 101, such as to be commonly understood.

THIS was an appeal from a decision of the Revising Barrister for the county of *Merioneth*.

John Humphrey Jones duly objected to the name of *John Jones* being retained on the list of voters for the county. The name and qualifications of *John Jones* appeared on the list as follows :—

Jones, John	*Caerffynon*	Leasehold house and garden	*Caerffynon*	Self tenant

The objector contended that the description of the qualification in the third column was not correct.

John Jones, in support of his claim, produced a lease of the qualifying property, dated the 7th day of *November*, 1865, granted to him by *Hugh Beavor Roberts*, the *habendum* of which was as follows :—"To hold the said premises hereby demised unto the said lessee, his executors, administrators, and assigns, from the 29th day of *September* last past, for and during the term of the natural life of the said lessee, but in the event of his dying within sixty years from the 29th day of *September* last, then for and during the remainder of a term of sixty years, to be computed from the 29th day of *September*, 1865, at the yearly rent of 10*s*."

The objector contended that the said *John Jones* (for whose life the qualifying property had been demised) had a present freehold interest in the premises, and that

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the interest in the term of years did not accrue till the death of the lessee.

The Revising Barrister decided that the said *John Jones* had under the lease a sufficient present interest in the term of years to entitle him to a vote in respect thereof, and therefore retained his name in the list of voters.

If the Court of Common Pleas should be of opinion that the decision of the Revising Barrister, as to the interest of the said *John Jones* in the premises under the said lease, was wrong, the name of *John Jones* was to be expunged from the register of voters for the county.

Dowdeswell, Q.C., for the appellant. The respondent has described his qualification as leasehold, which it clearly was not. The first limitation being for life conferred on him a freehold interest, and cannot be cut down into a leasehold by the subsequent proviso. A lease for years determinable on lives is no doubt leasehold, but that is an interest quite different from the one under consideration. The only leasehold interest here was in remainder; it was a mere contingent interest which possibly might never vest at all, and its vesting could in no event take effect until the determination of the life estate. Further, if in the result it ever should vest, it would vest in the respondent's executors, for it never could vest in the respondent himself. To entitle the respondent to a vote in respect of the leasehold he must have had a present interest in it, but he could not have that consistently with his life estate, which was vested and in possession.

R. E. Turner, for the respondent. The respondent

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had a sufficient leasehold interest to entitle him to a vote in respect of it. The term created by the demise was not, as has been argued on the other side, a mere contingent interest in the respondent's executors, but was in the respondent himself. In *Coke upon Littleton* (*a*), the law is thus laid down:—"If a man let lands to another for life, the remainder to him for twenty years, he hath both estates in him so distinctly that he may grant away either of them." In *Williams on Executors* (*b*), it is said that "if a lease be made for life or years with a remainder to the executors of the lessee, it shall be a vested interest in the lessee; . . . . . but if there be a lease for ninety-nine years, if the lessee live so long, with a proviso that if he die within the term that it should be to his executors for forty years, this last term shall not vest in the lessee."

[BYLES, J. Has the respondent, as regards the term of years, anything more than an *interesse termini?*

BOVILL, C.J. How can his interest in the term be said to be *in possession?*]

His interest is at all events such that he could create by assignment or underlease an interest in possession for the unexpired residue of the term, and under these circumstances it is submitted that he has a sufficient present interest in it. However, it is unnecessary to insist on this point, since the description of the qualification being wide enough to include a lease for life is sufficient on that ground. And if it be not, under 6 *Vict.* c. 18, s. 40,

(*a*) P. 54 b, (*b*) 6th ed. 662.

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it might have been amended by the Revising Barrister by inserting the words "for life," and thus defining the qualification with greater precision. Moreover, under sect. 101 of the same Act an inaccuracy of description does not vitiate, when the description is such as to be commonly understood.

Dowdeswell, Q.C., in reply. A freehold interest cannot be described as leasehold, nor could the Revising Barrister, under 6 *Vict.* c. 18, s. 40, have amended the description. He is not at liberty to change it under that section, "except for the purpose of more clearly and accurately defining the same." In Schedule (H), No. 3, of the 2 and 3 *Will.* 4, c. 45, there is a form for the list of county voters, and under the column headed "Nature of Qualification," is inserted "freehold house," "copyhold field," "*lease* of warehouse *for years*," &c., which shews the Legislature regarded freehold and leasehold as distinct qualifications. So, again, in Form No. 6, under heading "Nature of Supposed Qualification," we find "copyhold field," and "*lease* of warehouse *for years*."

[BYLES, J. The forms you refer to evidently contemplate some latitude. Take, for instance, the "lease of warehouse for years," nothing is said as to its duration, which might be insufficient to confer a vote.]

The duration will be presumed sufficient to confer a vote; but that is very different from presuming that a qualification described as leasehold can include a freehold interest. At all events the description is ambiguous,

and calculated to perplex an objector, and if so, on that ground also bad.

BOVILL, C.J. I am of opinion that the decision of the Revising Barrister was correct. The objection which was raised before him was, that the description of the qualification in the third column of the list of voters, viz., "leasehold house and garden," was incorrect. The respondent, by virtue of the lease under which he claimed, took a present interest for life, the term of years being only in remainder. And there can be little doubt that most men would consider a lease for life to be leasehold, although the interest is technically freehold. However, it is enough to say that the 6 *Vict.* c. 18, s. 101, enacts, "that no misnomer or *inaccurate description* of any person, place, or thing, named or described in any schedule to this Act annexed, or in any list or register of voters, ... shall in anywise prevent or abridge the operation of this Act with respect to such person, place, or thing, *provided that such person, place, or thing should be so denominated* in such schedule list register . . . . . *as to be commonly understood.*" In *Flounders* v. *Donner* (*a*), *Tindal*, C. J., said, "I think the words 'commonly understood' mean some clumsy description which, nevertheless, might point out the particular qualification relied on." Here I think "leasehold" was a popular description, and such as to be commonly understood, and therefore on that ground a sufficient description.

BYLES, J. I am of the same opinion. I think that a construction which would require illiterate persons to

(*a*) 1 *Lutw.* 371; 2 *C. B.* 70.

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state their qualifications with the strictest legal accuracy would be attended with considerable mischief. Indeed it might necessitate professional advice. Here, however, the description is accurate. It is true it does not state whether the lease is for life or years, but such an ambiguity does not in my opinion constitute a valid objection. The old forms in the 2 *Will.* 4, c. 45, which have been referred to on behalf of the appellant, confirm me in this view, for the description, "lease of warehouse for years," in one of those forms might equally be said to be ambiguous, since, the duration of the term not being stated there, no one could tell what might be the exact interest claimed under that description.

KEATING, J., concurred.

BRETT, J. I am of the same opinion. I assume the respondent's interest to be freehold; but, inasmuch as it was a life interest created by lease, the description may be applicable, and possibly is strictly so; but if not, I think it clearly within the 6 *Vict.* c. 18, s. 101.

Judgment affirmed.

Attorneys—For the Appellant, *M'Leod & Cann*, agents for *J. H. Jones, Portmadoc.*
For Respondent, *C. Wilkin*, agent for *David Pugh, Dolgelly.*

MASON, Appellant; BENNETT and Others, Respondents.

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An agreement to pay a composition for poor rates for a year ending the 25th of *March*, 1868, on tenements occupied or unoccupied, made by the owner under the 13 & 14 *Vict.* c. 99, s. 4, is a "composition" within proviso (1) of the 30 & 31 *Vict.* c. 102, s. 7. Therefore, where the owner of tenements in a borough made such an agreement, his liability under it to future poor rates ceased by virtue of the above proviso from the 29th of *September*, 1867, and not from the 15th of *August*, 1867, when the Act passed.

THE case stated:—At a Court held by the Revising Barrister appointed to revise the list of voters for the borough of *Whitehaven*, *John Mason*, on the list of voters for the said borough, objected to the name of *John Bennett* and others, (whose names appeared in the schedule,) being retained on the list of voters for the said borough.

The following facts were established by the evidence. The respondents were inserted in the said list of voters in respect of their occupation of dwelling-houses within the said borough. "The Small Tenements Act" (*a*) has, for many years, been applied to this borough, and under section 4 of that Act, the owner of the premises in question entered into an agreement in 1867, which was to remain in force from *March* 25th, 1867, until 25th of *March*, 1868, to pay a composition instead of the full ordinary rate in respect of these premises, whether they were occupied or not. Two rates for the relief of the poor were made in 1867, viz., on the 13th of *March*, and the 5th of *September*, and the names of the respondents appeared upon the rate books as occupiers in respect of both these rates. It further appeared, from the rate books, that the owner paid in one gross sum a composition in respect of these premises as soon as it became due, under each of the said rates.

(*a*) 13 & 14 *Vict.* c. 99.

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In part consideration of their services as workmen, the respondents, who were all employed as colliers by the owner of the premises which they occupied, paid no rent for such premises, but the compounded rates which were paid by the owner under the said rates of 13th *March*, and 5th of *September*, 1867, were, on each occasion, deducted from the wages of the respondents, which became due next after such payment by the owner.

The said rate made upon the 5th of *September*, 1867, was the rate for the time being, and remained in force until superseded by another made on the 13th of *February*, 1868. In respect of the last-mentioned rate, the names of the respondents appeared on the rate books rated as ordinary occupiers in respect of the premises, and many of them had, in fact, paid the full rates payable by them on that rate.

On behalf of the said *John Mason*, it was contended:

First. That the respondents were not entitled to vote, inasmuch as they had not complied with the conditions prescribed by section 3 of the said Act.

Secondly. That under section 7 of the said Act the liability of the owner to be rated instead of the occupier, ceased on and after the passing of the said Act.

Thirdly. That they had not brought themselves within section 8 of the said Act, inasmuch as they had not been duly rated as ordinary occupiers to all poor rates, in respect of the premises, after the liability of the owner to be rated had ceased, nor had they paid all poor rates payable by them as ordinary occupiers in respect of the premises up to the preceding 5th day of *January*.

On the other hand, it was contended in support of these votes—

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First. That by virtue of proviso (1) in section 7 of the said Act, the liability of the owner to be rated to the poor rate did not cease until the 29th of *September*, 1867, and, therefore, that the compounded rates paid in respect of the rate made on the 5th of *September*, 1867, were properly paid.

Secondly. That the respondents were entitled to be registered under section 8 of the said Act.

The Revising Barrister decided, that under proviso (1) of section 7 of the said Act, the liability of the owner to be rated did not cease until the 29th of *September*, and that the respondents were entitled to be registered under section 8 of the said Act, and therefore disallowed the objections, and retained the names of the respondents upon the list, and consolidated the appeals.

If the Court were of opinion that the Revising Barrister's decision was wrong, the register was to be amended by erasing the names of the respondents from the list.

Keane, Q.C. (*Mounsey* with him), for the appellant. The respondents were not entitled to have their names on the list of voters. To entitle them, they should have paid the full rate on the 5th of *September*, 1867, the owner's liability to pay a composition having ceased on the 15th of *August*, 1867, the day on which "The Representation of the People Act, 1867," (*a*) passed. The 7th section of that Act is a strong substantive enactment, that the owner's liability to poor rate shall cease in boroughs from the date of the passing of the Act in all cases, "except as thereinafter mentioned." And the only exception is the one which follows later in the sec-

(*a*) 30 & 31 *Vict.* c. 102.

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tion, viz.: "Where the dwelling-house or tenement shall be wholly let out in apartments or lodgings not separately rated," in which case "the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor rate." See the recent case of *Stamper* v. *The Churchwardens of Sunderland near the Sea* (a), decided on the construction of that exception. The respondents will contend, however, that a further exception is contained in the first of the two provisoes at the end of the section, viz., "that nothing in this Act contained shall affect any *composition* existing at the time of the passing of this Act; so, nevertheless, that no such *composition* shall remain in force beyond the 29th day of *September* next," *i.e.*, the 29th of *September*, 1867. As to this, the question turns on the sense in which the word "composition" is used in this proviso. If it is used to signify "an agreement for a composition," the respondents are no doubt right, since then, by the terms of the proviso, the owner's liability to pay a composition, instead of ceasing on the passing of the Act, would be continued down to the 29th of *September*, 1867. But if, as the appellant contends, the word "composition" is not used in that sense, but in the sense of "a rate compounded for," then there is nothing in the proviso to prevent the owner's liability ceasing on the passing of the Act. For on that construction of the word "composition," the only subject-matter with which the proviso deals is the "compounded rate" "existing at the time of the passing of the Act." The word "composition" occurs again later in the section in the second proviso, and there the context shows that it cannot mean "agreement for a composi-

(a) *L. R.* 3 *C. B.* 388.

tion." For that proviso speaks of "the *recovery* of any such . . . . . composition," language applicable enough if composition means "rate compounded for," but quite inapplicable if it means "agreement for a composition." The word "composition" must surely have the same meaning in both provisoes.

[BOVILL, C.J. Why so? In the former it may well mean the "agreement for a composition," in the latter the "amount agreed to be paid under it."]

The respondents' construction would defeat the policy of the Act. Suppose a rate to be made on the 28th of *September* on an estimate of expenses for the whole year, as in some places is the practice. If the respondents are right in their construction, the occupier might, under such circumstances, be entitled to be registered, although he had neither been rated nor paid rates during the qualifying year. Again, under the 8th section, one condition to be complied with by a person in the situation of the respondents is, "that he has been duly rated as an ordinary occupier to all poor rates in respect of the premises, *after the liability of the owner* to be rated to the poor rate *has ceased* under the provisions of the Act." It does not say "after the 29th of *September*," or "after the agreement for a composition has ceased," but on the contrary, refers back to the substantive enactment of the 7th section, that the liability of the owner shall cease at the time of the passing of the Act.

Manisty, Q.C. (*Mellish*, Q.C., *Kemplay* and *Thurlow* with him), for the respondents, was not called upon.

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BOVILL, C.J. Notwithstanding the ingenious argument of Mr. *Keane*, I am of opinion that this is a very clear case. The primary object of the 7th section of "The Representation of the People Act, 1867," was, no doubt, to prevent the owner being rated in boroughs instead of the occupier, after the passing of that Act, although a class of cases immediately follows in which the section distinctly says that the owner shall continue to be rated: *Stamper* v. *The Churchwardens of Sunderland near the Sea* (*a*). But we have here to deal with another class of cases, viz., where a composition has been entered into by the owner under the 13 & 14 *Vict.* c. 99, s. 4, by the terms of which the composition would continue in force until the 25th of *March*, 1868. And the question to be decided by us turns upon the construction of the first proviso of "The Representation of the People Act, 1867." Now that proviso, which overrides all that has been previously enacted in the section, provides "that nothing in this Act contained shall affect any *composition* existing at the time of the passing of this Act, so, nevertheless, that no such *composition* shall remain in force beyond the 29th day of *September* next." Mr. *Keane* has argued that that proviso means that "nothing in this Act contained shall affect any *compounded rate* existing at the time of the passing of this Act." But if that were so, the proviso would be wholly unnecessary, since it would be included in the proviso which follows and provides, "that nothing herein contained shall affect *any rate* made previously to the passing of this Act," and that the powers of collection and recovery shall remain in force "for the collection and recovery of any such *rate* or *composition*." That latter

(*a*) *L. R.* 3 *C. B.* 388.

proviso applying, as it does, to *rates*, I think the former proviso must have some other application. No doubt the word "composition" has often different meanings, as in the case of a composition with creditors, where it sometimes means the agreement for a composition, sometimes the amount agreed to be paid under it. But here the language of this first proviso, viz., that no such *composition* shall *remain in force*, &c., points to the agreement as meant by the word "composition," and not the payment under it. I think, therefore, that "composition" here means the agreement for a composition, and then by the terms of this proviso it is not to be affected by the Act, except that it is not to continue in force beyond the 29th day of *September*, 1867, instead of continuing (as it would under the 13 & 14 *Vict.* c. 99,) to the 25th of *March* following.

This view is confirmed by the language of the 8th section, which in substance enacts, that where any occupier of a dwelling-house . . . . . (for which the owner at the time of the passing of this Act is rated, or is liable to be rated,) would be entitled to be registered as an occupier at the first registration after 1867, if he had been rated for the required period, "such occupier shall, notwithstanding he may not have been rated *prior to the 29th day of September*, 1867, as an ordinary occupier, be entitled to be registered," subject to the conditions which the section prescribes. That points to a period other than the passing of the Act, viz., the 29th of *September*, 1867, as in some cases the dividing line. And then the first condition is, "that he has been duly rated as an ordinary occupier to all poor rates in respect of the premises, *after the liability of the owner to be rated to the poor rate has ceased*;" not as it would have been if

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Mr. *Keane's* contention were right, "to all poor rates *after the passing of this Act.*" In other words, the condition is so worded as to embrace not only the case of an owner who has been rated against his will, and whose liability is to cease on the passing of the Act, but also that of an owner who has entered into a composition, which exists after the passing of the Act, but is to cease on the 29th of *September*, 1867.

After listening carefully to Mr. *Keane's* argument, I have failed to discover any ground for holding this case not within the first proviso of the 7th section. There was a composition existing at the time of the passing of this Act, and it would have remained in force until the 25th of *March*, 1868, but for that proviso, by the operation of which it is not to continue in force beyond the 25th of *March*, 1867. For these reasons I think the decision of the Revising Barrister was correct.

BYLES, J. I am of the same opinion, and I rest my decision entirely on the first proviso of the 7th section of "The Representation of the People Act, 1867."

KEATING, J. I think the Revising Barrister was right, and indeed have been unable to discover what doubt can exist. The facts bring the case distinctly within the first proviso of the 7th section.

Decision affirmed.

Attorneys—For the Appellant, *Helder & Kirkbank*, agents for *Brockbank & Helder, Whitehaven.*

For the Respondents, *Gregory, Rowcliffes & Rawle*, agents for *Lumb & Howson, Whitehaven.*

TROTTER, Appellant; TREVOR and Others, Respondents.

(ANDERSON'S Case.)

HANKS, Appellant; JONES, Respondent.

BISHOP, Appellant; JONES, Respondent.

TROTTER *v.* TREVOR and Others.

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THE case stated that, at a Court held by the Revising Barrister, appointed to revise the lists of voters for the borough of *Northallerton*, the name of *William Anderson* was duly objected to being retained on the register of voters for the said borough, under the provisions of "The Representation of the People Act, 1867."

The facts of the case were as follows:—*William Anderson* was, on the last day of *July*, 1868, and during the whole of the preceding twelve months, an inhabitant occupier as tenant of a dwelling-house in the township of *Brompton*, within the said borough of *Northallerton*, of a net yearly rateable value of less than £6.

"The Small Tenements Act" (*a*) had been duly adopted in the township of *Brompton*, and was in force in that township at the time of the passing of "The Represen-

(*a*) 13 & 14 *Vict.* c. 99.

The word "composition" in proviso (1) of the 30 & 31 *Vict.* c. 102, s. 7, applies to all cases where, at the passing of the Act, the owner was (under the 13 & 14 *Vict.* c. 99, or any local Act) rated instead of the occupier at less than the full amount; and therefore, in all such cases, the owner's liability continued under the above proviso until the 29th of *September*, 1867, and did not cease on the 15th of *August*, 1867, upon the passing of the Act.

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tation of the People Act, 1867," and the owner of the premises occupied by the said *William Anderson* was assessed to the rates for the relief of the poor, and to all other rates and assessments in respect of which the owner of such premises was rateable pursuant to the provisions of that Act, and sect. 3 of the 14 & 15 *Vict.* c. 39.

It was customary in the township of *Brompton* to make all poor rates prospectively to meet the future expenditure.

The first rate for the relief of the poor within the township of *Brompton*, made after the passing of "The Representation of the People Act, 1867," was duly made and allowed by two justices on the 4th *September*, 1867; and in that rate the said *William Anderson's* name was inserted in the column headed "Name of Occupier," and the owner's name was inserted in the column headed "Name of Owner," and the owner was assessed, as he previously had been, in pursuance of "The Small Tenements Act," at three-fourths of the amount at which the said *William Anderson* would have been rateable had "The Small Tenements Act" not been adopted within the township of *Brompton*. The amount so assessed was paid by the owner.

The owner of the premises occupied by the said *William Anderson* had not at any time availed himself of the provisions contained in the latter part of sect. 4 of "The Small Tenements Act."

The said *William Anderson* had not claimed to be rated instead of the owner, in respect of the rate of the 4th *September*, 1867. No other rate for the relief of the poor was made for the said township before the 5th *January*, 1868.

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The next subsequent poor rates made in the year ending 31st *July*, 1868, were respectively made on the 14th *February* and the 21st *May*, and in both those rates the said *William Anderson* was rated as an ordinary occupier, and paid an equal amount in the pound to that payable by the other ordinary occupiers.

It was contended on behalf of the objection—

First. That the said *William Anderson* had not, during the whole of the twelve calendar months preceding the last day of *July*, 1868, been rated as an ordinary occupier in respect of the premises occupied by him, to all rates made for the relief of the poor in respect of such premises, and had not on or before the 20th day of *July*, 1868, paid an equal amount in the pound to that payable by other ordinary occupiers in respect of the same premises up to the preceding 5th day of *January*, according to the provisions of the 3rd sect. of "The Representation of the People Act, 1867."

Second. That the liability of the owner to be rated or assessed to any subsequent rate for the relief of the poor ceased on the passing of "The Representation of the People Act, 1867," under the provisions of section 7 of that Act.

Third. That this liability was in nowise affected by the first proviso to the last mentioned section, as the word "composition" in such proviso related only to cases when the owner had, under the provisions of the latter part of the 4th section of "The Small Tenements Act," compounded for the rate for a year in respect of all his tenements occupied or unoccupied within the township, of a rateable value of not more than £6, and to special local Acts.

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It was contended on the part of the said *William Anderson*—

First. That the rate made on the 4th *September*, 1867, was not payable by him in respect of the premises then occupied by him, but by the owner thereof, and that, therefore, the fourth paragraph of section 3 of "The Representation of the People Act, 1867," was not applicable.

Second. That a composition within the meaning of that word in the first proviso to section 7 of the Act existed in the township at the time of the passing of the Act, and that as the rate was made before the 29th *September*, 1867, and as the said *William Anderson* had actually been rated as an ordinary occupier in all subsequent rates, he must be taken to have been sufficiently rated under the 7th and 8th sections of the Act for the purposes of being placed on the register.

Upon the above facts the Revising Barrister decided that the said *William Anderson* was entitled to have his name retained on the register. If the Court should be of opinion that his decision was wrong, the register was to be amended by expunging the name of *William Anderson* and eighty-five other persons whose appeals were consolidated.

Manisty, Q.C. (*Lovesy* with him), for the appellant (*a*). The question for decision is, whether, when under the 13 & 14 *Vict.* c. 99, an order of a vestry has been made, in respect of tenements under £6 in value, for the compulsory rating of the landlords of such tenements at three-fourths of their value, such abatement of

(*a*) Argued *Nov.* 17.

rate is a "composition" within proviso (1) to the 7th section of "The Representation of the People Act, 1867" (a). If it is, the respondents are no doubt entitled to be on the register, although they have not paid the rate made on the 4th of *September*, 1867, since they were not liable to that rate, the proviso continuing their landlord's liability down to the 29th. But if, as is submitted, such abatement of rate be not a "composition," then inasmuch as the landlord's liability would, under the enacting part of the 7th section, cease on the 15th of *August* upon the passing of the Act, the respondents are disqualified by non-payment of the *September* rate.

It has been already decided, *Mason* v. *Bennett* (b), that an agreement for a composition with the landlord for tenements occupied or unoccupied, under the 4th sect. of the 13 & 14 *Vict.* c. 99, is a "composition" within the meaning of the above-mentioned proviso; and, on behalf of the appellant, it is submitted that the word "composition" is restricted to such an agreement, and cannot apply to the compulsory rating of a landlord under the powers of an Act of Parliament, although at a reduced rate. The meaning of the word "composition" cannot be ascertained from the 13 & 14 *Vict.* c. 99, since that enactment does not even mention the word. However, the word "compound householder" came into use soon after, as we find from the 14 & 15 *Vict.* c. 14, which is entitled "An Act to Amend the Law for the Registration of certain persons commonly known as 'Compound Householders,' and to facilitate the exercise by such persons of their right to vote in the Election of Borough Members, &c." And the 3rd section of that

(a) 30 & 31 *Vict.* c. 102. (b) *Ante*, p. 101.

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Act has express reference to compositions *with the landlord*. Prior to that Act, viz., under sect. 30 of the 2 *Will.* 4, c. 45, an occupier who was not on the rates could claim to be rated on paying or tendering the full amount of the rate then due, and in that state of the law, the 3rd sect. of the 14 & 15 *Vict.* c. 14, provided "that in cases where by any *composition with the landlord* a less sum shall be payable than the full amount of rate, which, except for such composition, would be due in respect of the same premises, the occupier claiming to be rated shall not be bound to pay or tender more than the amount then payable under such *composition*." It is submitted that the expression "composition with the landlord" there used, must mean and be restricted to an "agreement for composition with the landlord;" and that in the first proviso of the 30 & 31 *Vict.* c. 102, s. 7, the word "composition" must be similarly restricted.

First, as regards the 14 & 15 *Vict.* c. 14, s. 3, the expression "composition with the landlord" is obviously inappropriate to a compulsory rating throughout the parish of all landlords of small tenements. And there is good reason why the Legislature should have intended that this section should apply only to agreements for composition; for the parish, being entitled under these agreements to be paid for unoccupied tenements, could not in justice, while they had the benefit of that payment, take from occupiers more than the amount of the composition; whereas, when the rate on the landlord was compulsory and there was no payment for unoccupied houses, the same reasoning did not apply.

Again, as regards the 30 & 31 *Vict.* c. 102, s. 7 (which speaks of the composition as "existing at the time of

the passing of this Act" and "remaining in force"), the language used, while applicable to an agreement for a composition, is not applicable to a compulsory rating under the order of a vestry. And as to the hardship which the framers of the proviso may be supposed to have had in view, whereas the sudden determination by Act of Parliament of an agreement entered into for a fixed period might well involve hardship, there could be no hardship in suddenly determining by Act of Parliament a compulsory rating, the order for which the vestry could rescind at any moment. But, perhaps, the greatest difficulty in the respondents' way is, that on their construction of the word "composition" the proviso is as wide in its operation as the enactment; and while the enactment says that the owner's liability is to cease on the 15th of *August* upon the passing of the Act, the proviso continues it down to the 29th of the *September* following.

Gray, Q.C. (*Cave* with him), for the respondents. The whole question is, as has been stated, whether the present case is one of "composition" within the meaning of proviso (1) of "The Representation of the People Act, 1867." It is submitted that it is, and that the "composition" referred to in the proviso extends to all cases where, the owner being on the rate and not the occupier, the owner pays a rate less in amount than the other occupiers in the parish. That was the case under the 13 & 14 *Vict.* c. 99, and also under a variety of local Acts. It was also so under the 59 *Geo.* 3, c. 12 (*a*), but the 23rd section of that Act excepts Parliamentary

(*a*) *Sturges Bourne's* Act.

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boroughs. It is argued on the other side, that if the respondents' construction be right, there is no case within the enacting part of the 7th section of "The Representation of the People Act, 1867," which is not equally within the first proviso, so that the proviso is, in effect, in conflict with the enactment. There may, however, well have been cases within the enactment which would not also be within the proviso. One class of cases would be where, apart from any statutory composition and without the authority of an Act of Parliament, the owner was on the rate book instead of the occupier, and it was no one's interest to object. That is one class of cases within the 7th section, and the effect of that section would be to make it illegal to rate the owner any longer after the Act passed. For in that respect the Act introduced a new policy, viz., that the occupier should be on the rate book whether he wished it or not, whereas previously this had been treated by the Legislature as the privilege of the voter (*a*). The 14 & 15 *Vict.* c. 14, strongly favours the respondents' contention; it is entitled "An Act to Amend the Law for the Registration of persons commonly known as 'Compound Householders,' &c." And by a "compound householder" is meant a tenant of an owner, who, under the Acts that have been referred to, is rated at less than other occupiers, whether such owner has entered into an agreement of composition or not. The respondents are "compound householders" within that definition, and inasmuch as the 3rd section must apply to all "compound householders," their case must be one of "composition" within that section. Reliance has been placed, however, on the

(*a*) See 2 *Will.* 4, c. 45, s. 30, and 14 & 15 *Vict.* c. 14, ss. 1, 3.

other side, upon the words "composition *with the landlord;*" but no argument can be founded on that, since both kinds of composition are, in fact, compositions with the landlord.

Assuming, then, that the 14 & 15 *Vict.* c. 14, includes both kinds of composition, it is submitted as clear that proviso (1) to the 30 & 31 *Vict.* c. 102, s. 7, must also be equally general, more especially as by sect. 59 both Acts are to be read together. There is nothing in the context which militates with such a construction. And as regards the argument that there is no hardship in suddenly determining by Act of Parliament what the vestry could rescind at any moment, there is an entire misconception. For although it is true that in this particular case the vestry could have rescinded the order, it being more than three years old, yet, until the three years have expired, a vestry has no such power (*a*). In a word, no sufficient reason can be assigned for restricting the proviso to the one kind of composition to which the appellant would limit it.

Manisty, Q.C., replied.

Cur. ad. vult.

HANKS, Appellant; JONES, Respondent.

BISHOP, Appellant; JONES, Respondent.

THESE were two cases stated by the Revising Barrister of the borough of *Malmesbury*, raising the same question as in *Trotter* v. *Trevor*, but the decision

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(*a*) See 13 & 14 *Vict.* c. 99, s. 2.

1868. of the Barrister was in these cases in favour of the objection.

HANKS v. JONES.

Macnamara, for the appellant in both cases. The point for decision is the same as in *Trotter* v. *Trevor* (argued yesterday), in which the Court reserved judgment, but in the present cases the Revising Barrister held the objection good. It is submitted that he was wrong, and (without reiterating all the arguments) that "composition" in proviso (1) to "The Representation of the People Act, 1867," means simply "abatement of rate," applying, in fact, to all cases where something less than the full amount is payable. That is the ordinary and popular meaning of the word "composition." And with reference to the present point no practical distinction can be drawn between the two kinds of composition which the 13 & 14 *Vict.* c. 99, has called into existence. Neither kind can in strictness be called an agreement. Both derive their force from the vestry's order that the owner shall be rated instead of the occupier; the owner, however, having the alternative, if he desires to pay for tenements occupied or unoccupied, and at a less rate than when the payment is for occupied tenements only, to give notice to that effect as the Act prescribes. The 14 & 15 *Vict.* c. 39, which is "An Act to Exempt Burgesses and Freemen in certain cases from the Operation of" the 13 & 14 *Vict.* c. 99, may be referred to as supporting the argument, that the Legislature, while dealing with this subject, has never attempted to draw a distinction between the two kinds of composition. It is said on the other side that the appellant's construction is open to the objection of making proviso (1) to the 7th section of "The Representation of the People Act, 1867,"

as wide as the enactment. Suppose, however, that an owner, having been on the rate as an ordinary occupier, continued there after he had let the premises, that would be an instance within the enactment and not within the proviso.

[BOVILL, C.J. The enactment says, "His *liability* to be rated in any future poor rate shall cease." That must refer to the case of an owner *liable* to be rated; but you put a case where the owner's payment is merely voluntary.]

There may have been cases under local Acts where the full amount of rate was payable by the owner, and if so, they would satisfy the enactment. The 14 & 15 *Vict.* c. 14, s. 3, is strongly in the appellant's favour, since no valid reason can be assigned for limiting its effect to the one kind of composition to which the respondent would limit it. If it includes *both* kinds, sect. 7 of the 30 & 31 *Vict.* c. 102, must do the same, since by sect. 59 of that enactment both Acts are to be construed as one.

Mellish, Q.C. (*Dowdeswell*, Q.C., and *G. T. Howard* with him), for the respondent. The question is, whether in proviso (1) to the 30 & 31 *Vict.* c. 102, s. 7, the word "composition" is to have its natural meaning of "an agreement for a composition," or is to be held to refer to a general law applied under an Act of Parliament throughout a whole parish. The appellant is in this difficulty, that, whereas the Legislature says in plain terms that, except in certain cases the owner's liability is to cease from the passing of the Act, the appellant

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contends in effect that in no case is the owner's liability to cease from the passing of the Act, but in every case from the 29th of the *September* following. The Court will not assume that the draftsman who penned the Act ever intended the proviso thus to stultify the enactment.

Again, the sudden determination of the landlord's liability by Act of Parliament causes no hardship where an agreement of composition has not been entered into, since the Act does no more than the requisite majority of the parish could at any moment do by rescinding the vestry order.

[BOVILL, C.J. When the vestry order has been in existence three years it could be so rescinded, but not when it is new.]

The language of the provisoes to the 7th section favours the respondent's construction, and the distinction between the word "rate" (which applies to a case of rating even at a reduced amount) and the word "composition" is there pointedly drawn. Proviso (2) is not, like proviso (1), a qualification of what has gone before, but is introduced merely *ex cautelâ*. Again, the language of sect. 8 obviously contemplates more than one period at which under different circumstances the liability of the owner ceases, whereas the effect of the appellant's contention would be, that it must cease in every case on the 29th of *September*. The 14 & 15 *Vict.* c. 14, is also against the appellant. For, whereas sect. 1 applies to the appellant's case, sect. 3 only applies where the landlord has entered into an agreement of composition. The words there used are "composition with the landlord." If the words "with the landlord"

had occurred in the proviso under discussion, could there have been a doubt that the meaning must be what the respondent contends? And yet in both enactments the word "composition" must receive the same construction. The 11 & 12 *Vict.* c. clxi., is one of the local Acts which the Court desired should be brought before them (*a*). It appears that under sect. 53 provision is made for rating owners of small tenements instead of the occupiers at the full rate, and under sect. 56 for enabling the owners to compound at two-thirds of the rate for tenements occupied or unoccupied.

[KEATING, J. If the owner be rated at the full amount under sect. 53, we have a case within the enacting part of 30 & 31 *Vict.* c. 102, s. 7, and not within the first proviso.]

Macnamara replied.

BOVILL, C.J. The case argued yesterday (*b*), and the two cases brought before us this morning, depend upon the same point, and I am glad the discussion has been continued so as to place the Court in possession of all that could be adduced on either side. The question depends on the construction of the first proviso of "The Representation of the People Act, 1867," which enacts "that nothing in this Act contained shall affect any *composition* existing at the time of the passing of this Act, so, nevertheless, that no such composition shall remain in force beyond the 29th day of *September* next."

(*a*) The Court had requested during the argument that reference might be made to the provisions of some of the local Acts as to rating.

(*b*) *Trotter* v. *Trevor.*

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And the question is what the meaning of "composition existing at the time of the passing of this Act" is. If, indeed, this proviso had included every case within the principal enactment of the 7th section, there would have been great difficulty in answering Mr. *Mellish's* argument, that we ought not so to construe the Act as to make the proviso negative the enactment, thereby in effect stultifying the Legislature; and I for one should have felt great difficulty in so construing the proviso. The difficulty was to see what case would come within the enactment, and not within the proviso. But towards the close of the argument Mr. *Mellish* referred us to an Act of Parliament of a local nature (*a*) (passed before the 13 & 14 *Vict.* c. 99), which supplies such a case; and from which it appears that, in some cases at all events, and probably in many, the owner was in particular towns assessed instead of the occupier, *without any diminution in the amount of the rate*, while in the same Act of Parliament power was given to the landlord to compound for a *less* sum, which was to be paid whether the premises were occupied or not. That was the state of things existing under various local Acts at the time of the passing of the 13 & 14 *Vict.* c. 99, which enactment authorised the vestry of a parish to order tenements of a yearly rateable value not exceeding £6 to be rated to the owners instead of the occupiers. And by sect. 4 of that Act, while the order of the vestry was in force, the amount at which the owner was to be assessed was fixed at three-fourths of what the rate would have been on the occupier; but, if the owner chose to be assessed for his tenements whether

(*a*) 11 & 12 *Vict.* c. clxi.

occupied or not, he might be so assessed for a year at a sum not less than one-half on giving notice as the Act prescribes. Therefore we have in all three sets of cases brought before us:—First, where the owner was rated instead of the occupier at the full amount; secondly, where, under an agreement to pay for his tenements, whether occupied or not, he was rated at less than the full amount; and, thirdly, where he was rated at less than the full amount without any such agreement.

The next Act in order is the 14 & 15 *Vict.* c. 14, which, as has been observed, is a Registration, and not a Rating Act. Now, to what cases does this Act apply? It does not apply to cases arising under *Sturges Bourne's* Act (that Act, by its 23rd section, not applying to Parliamentary boroughs); nor does it seem to relate to cases under the 13 & 14 *Vict.* c. 99, because, whereas that Act relates to tenements not exceeding £6 in value, the borough occupation franchise, when the 14 & 15 *Vict.* c. 14, passed, was a £10 franchise. The 14 & 15 *Vict.* c. 14, must apply, then, to cases arising under the local Acts; and these Acts, or, at all events, some of them, furnish cases in which the owner was rated at the full amount, and others in which he was rated at less than the full amount. And with that the language of the 1st and 3rd sections agrees. For sect. 1 speaks of a person paying or tendering "the *full amount* of the rate or rates (if any) due," which seems to refer to a case where, under a local Act, the owner pays the full amount, instead of the occupier; and sect. 3 refers to "cases where, by any composition with the landlord, a *less sum* should be payable *than the full amount* of rate." Now, it may be that this 3rd section would apply to all cases where less than the full amount is payable, but

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what I wish to call attention to here is, that by the 1st and 3rd sections the distinction is drawn, as I have pointed out, between payment of *the full*, and payment of *less than the full* amount of rate.

Finally, we come to the 31 & 32 *Vict.* c. 102. The 7th section of that statute enacts that "where the owner is rated at the time of the passing of this Act" (*i.e.*, the 15th of *August*, 1867), to the poor rate, in respect of a dwelling-house or other tenement situate in a parish wholly or partly in a borough, instead of the occupier, his liability to be rated in any future poor rate shall cease. That being a perfectly general enactment would, if it stopped there, apply to every case where the owner is rated instead of the occupier, whether at the full amount or less, and whether under the 13 & 14 *Vict.* c. 99, or under the local Acts. The section proceeds, "and the following enactments shall take effect with respect to rating in all boroughs:—1. After the passing of this Act no owner of any dwelling-house or other tenement situate in a parish either wholly or partly within a borough, shall be rated to the poor rate, instead of the occupier, except as hereinafter mentioned."

But for that exception the language of the sub-section is as general as the principal enactment. Then comes the first proviso, viz.: "That nothing in this Act contained shall affect any *composition* existing at the time of the passing of this Act, so, nevertheless, that no such composition shall remain in force beyond the 29th day of *September* next." Now, if the word "composition" is there used simply to designate cases *where less than the full amount is paid*, there is no difficulty in the Act; and although between the two forms of composition existing under the 13 & 14 *Vict.* c. 99, there are

certain differences, the one existing throughout the parish, the other in particular cases only, the one without the owner's agreement, the other with it, the one for one period, the other for another—yet, notwithstanding these differences, I have failed to discover any really cogent reason why the system of rating applicable in the one case, should determine on the 15th of *August*, and in the other on the 29th of *September*. It is said, indeed, that the 29th of *September* was convenient, as being quarter-day, with reference to arrangements between landlord and tenant, but in that respect there seems equal reason to have fixed the 29th of *September* in both cases. Again, although in this particular case, the parish could have rescinded the order at once, it being an old one; yet, there may well have been cases where the order was new, and where, therefore, until three years had expired from its date, the power of rescinding would not exist (*a*). Consequently, no argument can be founded on that power of rescission.

Looking at the language of the 14 & 15 *Vict.* c. 14, and the distinction there drawn between payment of *the full*, and payment of *less than the full* amount of rate, I come to the conclusion that the Legislature in this first proviso have used the word "composition," as applying to cases where *less than the full amount* is paid, and that this is its right construction. We have already decided in *Mason* v. *Bennett* (*b*), that where, by agreement, a less sum is paid by the owner than would be payable by the occupier, it is clearly within the proviso, and there seems no reason why it should not equally be so, whether such payment be by agreement, or simply under the powers

(*a*) 13 & 14 *Vict.* c. 99, s. 2. (*b*) *Ante*, p. 101.

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of the Act of Parliament. The effect of that construction will be, that after the passing of this Act no rate could be made on the owner instead of the occupier, except in cases where *less than the full amount* is paid, but that in those cases the owner would, under the proviso, continue to be rated until the 29th of *September*. That will best give effect to the intention of the Legislature, and render the whole of these clauses consistent. The 8th section is quite consistent with this view. At first, indeed, I thought that the first condition in that section would assist Mr. *Mellish's* argument, because it seemed to contemplate two different periods at which the liability of the owner would cease. But when we come to the conclusion that the rating of the owner, when at the full amount, is to cease on the passing of the Act, and when at less, on the 29th of *September*, the words of the condition in the 8th section are quite in accordance with that construction.

On these grounds, I am of opinion that where there is a rating of the owner at less than the full amount, although not by agreement, but by virtue of an order under the 13 & 14 *Vict.* c. 99, there is a composition within the meaning of the proviso under discussion. The result will be that in *Trotter* v. *Trevor* the decision of the Revising Barrister will be affirmed, and in the other cases reversed.

BYLES, J. I am of the same opinion, and I base my judgment entirely upon the meaning of the word "composition," which I think applies to every case where rate is abated; but it must be abated under the sanction of an Act of Parliament. Now, under the 13 & 14 *Vict.* c. 99, there were two modes of rating the owner, both involv-

ing an abatement; the first, by an order of the vestry simply; the second, by an order of the vestry coupled with an agreement. And I can see no reason for a distinction between the two cases.

KEATING, J. I am of the same opinion. With regard to the meaning of the word "composition," since, when the Act passed, there were existing under the 13 & 14 *Vict.* c. 99, two classes of cases in which an owner was rated and paid—in the one case by agreement, in the other by an order of the vestry without agreement—a sum less than the amount ordinarily paid, I see no reason why both classes should not be termed compositions. Both were popularly known as compositions, and it is the ordinary signification of the word. Moreover, no satisfactory reason has been adduced for making a distinction between the two cases; and, if the Legislature had really intended to exclude one—and, as I should suppose, the more numerous class—from the benefit of the proviso, I should expect to find some language declaratory of that intention. I think both classes are within the proviso.

BRETT, J., concurred.

Decision in *Trotter* v. *Trevor* affirmed; in the other two cases reversed.

Attorneys—In *Trotter* v. *Trevor*, for Appellant, *James Crowdy*.

For Respondent, *R. M. & F. Lowe*.

In *Hanks* v. *Jones*, and *Bishop* v. *Jones*,

for Appellants, *Deane & Chubb*, agents for *Chubb & Son, Malmesbury.*

For Respondents, *Bower & Cotton*, agents for *Jones & Forrester, Malmesbury.*

JONES, Appellant; BUBB, Respondent.

Nov. 11—13.

The word "made" in 30 & 31 *Vict.* c. 102, s. 3, par. 3, is to be construed as *completely* made. Therefore, where a poor rate purporting to be made on the 18th *July*, 1867, was allowed by Justices on the 4th *September*, 1867, and published on the 8th *September*, 1867:—*Held*, that it was not a rate "*made* during the time of occupation" of a claimant seeking to qualify for the twelve months succeeding *July* 31, 1868.

THE case stated:—At a Court held on the 22nd day of *September*, 1868, by the Revising Barrister for the borough of *Malmesbury*, *William Stephens Jones*, a person on the list of voters for the said borough, duly objected to the name of *William Bubb* being retained upon the list of persons entitled to vote in the election of a member for the said borough, in respect of his occupation of a dwelling-house in the parish of *Somerford Magna* within the said borough.

The ground of objection was, that the respondent had not been duly rated.

A rate made for the relief of the poor of the said parish was produced by the overseers. By the "heading" thereof this rate purported to have been made by the overseers on the 18th day of *July*, 1867, and on each page thereof, in the usual form, there were the words "Rate made the 18th day of *July*, 1867." The rate was duly allowed on the 4th day of *September*, 1867, and that date appeared in the entry of such allowance as the date thereof. The rate was duly published on the 8th day of *September*, 1867.

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The respondent was not rated to the said rate. The appellant contended that this was a rate made during the twelve calendar months preceding the 31st day of *July*, 1868; that the date in the heading of the rate was not the time when it was "made" within the meaning of the 3rd section of "The Representation of the People Act, 1867;" and that the said rate was not so "made" until the day of the allowance thereof, or until the day of the publication thereof, and that not being rated therein the said respondent was not entitled to be registered under the said 3rd section of that Act.

Apart from the question raised by this objection the respondent's qualification was proved to the satisfaction of the Revising Barrister, who decided, that although a rate is of no force until it has been allowed and published, yet that after allowance and publication it is to be deemed to have been made on the day on which it purports to have been made by the overseers, upon whom the duty of making it devolves; that the word "made" in the 3rd section of the said Act is to be thus construed; and, as such day in respect of the rate in question was prior to the qualifying twelve months' occupation of the respondent, disallowed the objection and retained his name on the said list.

The names of eleven other persons, whose names were set forth in a schedule annexed to this case, were objected to by the said appellant upon a state of facts corresponding with those in the case aforesaid, and the Revising Barrister being of the opinion expressed above, retained each of the said names upon the said list.

The validity of the objections to the said several names depended and was decided upon the same point of law, and the appeals were ordered to be consolidated.

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The question for the opinion of the Court was, whether the said rate was a rate "*made*" during the twelve calendar months preceding the last day of *July*, 1868, within the meaning of the 3rd section of the Act aforesaid; and if the Court was of opinion that it was, the names of the said *William Bubb* and of the said eleven other persons were to be expunged from the said list.

Dowdeswell, Q.C. (Hon. *G. Howard* with him), for the appellants.

The rate on its face purported to be made by the overseers on the 18th day of *July*. There was, however, no proof that it was so made, and the Revising Barrister merely states the fact of the rate having been produced before the Revising Barrister purporting to have been made at that date. It was allowed by the Justices on the 4th of *September*, and it was published on the 8th of *September*. The question then is, when was it "made" within the meaning of sub-section 3 of section 3 of 30 & 31 *Vict.* c. 102? It is submitted that it is incumbent upon a party duly objected to, to prove all the conditions precedent and necessary to his having a vote. This the claimant has not done; he has merely produced a rate with an entry on its face, of the truth of which he gives no evidence, while the true dates of the important acts of allowance and publication are duly proved.

A rate is not a rate in a legal sense until, at least, allowance has taken place. The stat. 43 *Eliz.* c. 2, s. 1, in effect proves that. Its terms are:—"And they" (the overseers) "or the greater part of them shall take order from time to time by and with the *consent* of two or more such justices of the peace as is aforesaid; . . . also

raise weekly or otherwise (by taxation of every inhabitant, . . . in such competent sum and sums of money as they shall think fit,) a convenient stock of flax, &c., to set the poor on work, and also competent sums of money for and towards the necessary relief of the lame, impotent," &c. A rate could be altered at any time before publication.

[He was stopped by the Court.]

Macnamara (Sir *J. Karslake*, A.-G., and *Keane*, Q.C., with him), for the respondent.

It is contended that the "making" is that part which is performed in the first instance by the churchwarden and overseers. The statute of *Elizabeth* does not make the allowance necessary to the making of the rate, but to the carrying into effect of the rate. There are three distinct acts which ought not to be confounded with one another. This can be shown by references to decisions. For instance, a *mandamus* to *make* a rate is addressed to the overseers only (*a*). A *mandamus* to justices to *allow* a rate also lies (*b*). The 6 & 7 *Will.* 4, c. 96, has not altered the law (*c*). These cases show the allowance to be merely a ministerial act. Although a rate cannot be enforced until it has been allowed and published, yet these latter proceedings have relation back to the making by the overseers, and the rate dates from the making.

[BYLES, J. Suppose the land at the time of the

(*a*) *R.* v. *Gadsby*, 1 *Nev. & Per.* 572.

(*b*) *R.* v. *Justices of Dorchester*, 1 *Strange*, 393.

(*c*) *Reg.* v. *E. of Yarborough*, 12 *A. & E.* 416.

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making to be occupied by A., and at the time of the allowance by B., do you say that A. is to pay the rate?]

Yes.

[BRETT, J. And do you say the overseers could not alter the rate before allowance?]

It is submitted that that is so when they have really made it. In sect. 3 of "The Representation of the People Act, 1867," the expression is "made," not made and "allowed."

[BYLES, J. Is it not the fact that the poor rate does not operate to charge the land, but only the person?]

Yes. In *Reg.* v. *Inhabitants of St. Mary Kalendar* (*a*) (a settlement case), it was held, that where payment of rates for a whole year is material, it is no excuse for non-payment of the last rate, that such rate, though made during the year, was not published till after its expiration. There the date of commencement to occupy the house by the pauper was the 5th *October*, 1835; he quitted *October* 5, 1836; the rate was made *September* 29, 1836; allowed on the 4th *October*, and published on the 9th *October*. The same argument was used there as here, that a rate is said to be made when the parish officers have prepared it, and the Court held, that the time at which the rate was *published* was not material.

The "allowance" of a rate only means the consent of justices to "raise" the money (*b*). The churchwardens

(*a*) 9 *A. & E.* 626. (*b*) 43 *Eliz.* c. 2, s. 1.

and overseers of the poor are by and with the consent of two or more such justices of the peace . . . . "to *raise* weekly," &c., but the rate exists as a rate the moment it is made.

[BYLES, J. Do you use the word "raise" as synonymous with collect?]

Yes—collect, or enforce. The same argument applies to the publication which is required by stat. 17 *Geo.* 2, c. 3, s. 1, that no rate be esteemed valid "so as to collect and raise the same unless" it shall have been published. The mere test of the rate not being enforceable when made before allowance applies equally to allowance before publication. All the three acts are indispensable to the collection of a rate.

[BOVILL, C.J. Do you say that any liability on the part of occupiers accrues on the making of a rate before allowance?]

Yes—an inchoate liability, to be perfected by certain ministerial acts. By 6 & 7 *Will.* 4, c. 96, s. 1, "No rate for the relief of the poor shall be allowed by any justices, or be of any force which shall not be made upon an estimate of the net annual value," &c. Yet in sect. 2 the churchwardens "shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form" in the schedule, "and otherwise the said rate shall be of no force or validity." In *Reg.* v. *Fordham* (*a*) decided upon that Act, the last words of the

(*a*) 11 *A. & E.* 73.

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section were held to refer solely to the absence of the signature of the overseers, and not to the absence of the particulars and other matters of form also contained in the section. In *Wright* v. *The Town Clerk of Stockport* (*a*), *Tindal*, C.J., said, that the object of the provision of rating in the Reform Act appeared to be, that additional evidence should be thereby furnished of the actual occupation by the claimant during the twelve months made necessary by the Act.

[KEATING, J. It does not seem to have been thought necessary to give a form of allowance in the schedule of 6 & 7 *Will.* 4, c. 96?

BOVILL, C.J. In populous places even in the course of two or three days many changes occur in occupancies.

BRETT, J. Does not "made" in the 3rd section of "The Representation of the People Act" mean made and enforceable? Would you disfranchise where the reason the rate had not been paid was that it had not been allowed or published?]

No—the next clause of that section provides for that case in effect. It only stipulates for payment of all poor rates that have become "*payable*" up to the preceding 5th of *January*. The phrase "making," as applied to a rate, had acquired an accepted legal meaning before the passing of "The Representation of the People Act, 1867," and that was either the making by the overseers on the day mentioned in the heading

(*a*) 1 *Lutw.* 32; S. C. 5 *M. & Gr.* 53.

of the rate, or, if being allowed by the justices were essential to the making, that act had relation back to the day of actual making. Either view is consistent with the respondent's case. The "allowing" is a sanction or ratification, and the act is not to be attributed to the date of sanction, but the latter has a retro-active effect. The maxim, "*Omnis ratihabitio retrotrahitur et mandato æquiparatur*" applies. The occupier's liability attaches from the time of making and signing of the rate. Perhaps it would be more correct to describe it as an inchoate rate.

[BOVILL, C.J. By the "Highway Act," 5 & 6 *Will.* 4, c. 50, s. 27, it is "enacted that a rate shall be made, assessed, and levied by the surveyor," . . . and "that every such rate shall be signed by the said surveyor and allowed by two justices of the peace, and published in the same way as poor rates are now allowed and published." There the word "made" is probably used in the popular sense of the making out of the rate. But here the difficulty arises from the language of the 43 *Eliz.*, which does not seem intended to separate the functions of the overseers and the justices.]

The signing of the rate by the majority of the churchwardens and overseers is a judicial act. It is submitted they cannot afterwards alter the rate.

Rex v. *Newcomb* (*a*) impliedly treats it as clear that the allowance is only a ministerial act. There a rate though allowed was decided to be void, because not duly published according to the stat. 17 *Geo.* 2, c. 3, then regulating the publication.

(*a*) 4 *T. R.* 368.

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In *Reg.* v. *Lord Godolphin* (*a*), *Williams*, J., granted a rule for a *mandamus* to justices to affix their signatures to a rate made and signed by the overseers, and it was stated to be the practice of the Court to treat it as so much a matter of course as to grant the rule absolute in the first instance.

[BOYILL, C.J., referred to 17 *Geo.* 2, c. 38, s. 12.

BYLES, J. *Stevens* v. *Evans* (*b*) is the leading decision as to the law in the case of a man dying after the completion of the rate, leaving it unpaid.]

If the appellant's contention be correct, although the claimant has proved an occupation from the 31st of *July*, 1867, to 31st *July*, 1868, yet he must shew that he in fact occupied before the date required by the Reform Act.

With reference to the doctrine of relation, *Agnew* v. *Reilly* (*c*) and *Muldowney* v. *Malcolmson* (*d*) may be cited, in both of which cases a claim to be rated, made after the expiration of the qualifying year, was held to relate back so as to substantiate the claim to vote. In *Lorant* v. *Scadding* (*e*), the judgment of the Exchequer Chamber, reversing that of the Queen's Bench, was affirmed in the House of Lords (*f*). It is a decision, it is true, upon a local Act, but it was held that a rate was "made" at a meeting on the 12th *August*, though the fact was, that it was begun at that meeting and com-

(*a*) 1 *D. & L.* 830; S. C. 13 *L. J. M. C.* 57.
(*b*) 2 *Burr.* 1152.
(*c*) 2 *Ir. C. L. R., N. S.* 560.
(*d*) 15 *Ir. C. L. R., N. S.* 375.
(*e*) 13 *Q. B.* 687—711.
(*f*) 3 *Ho. Ld. Cas.* 418.

pleted on the 14th *September*, to which day the meeting was duly adjourned by successive adjournments.

Alderson, B., (*a*), remarked, "I have no doubt that the rate may be considered as made before the signing."

Maule, J., said, "The word rate will vary in its signification. The making a 'rate' may be the resolution that a rate shall be made."

Bushell v. *Luckett* (*b*), which at first sight seems against the contention of the respondent, is not really so. The Court decided that case under sect. 30 of "The Reform Act," 2 *Will.* 4, c. 45. A rate had been made on the 28th *September*, 1844, and purported to be made for thirteen weeks from 16th *September* to 16th *December*. A new rate was made on the 23rd *December*, 1844, allowed on 3rd *January*, 1845, and published on 5th *January;* and it was held, that a claim which had been sent in on the 27th *December*, to be put on "the rate for the time being," was a claim to be put on the rate made in *September*. The Court, in fact, held that the words used described the last complete rate, and that the claim was properly directed to that rate. That case, too, was decided upon a different statute, by which it was necessary not only to claim to be rated but to pay or tender the amount.

The claimant of a vote is only liable for rates "*payable*" by him.

[BRETT, J. Do you contend that there a distinction is intended between the words "made" and "payable," in the two sub-sections of sect. 3 of "The Representation of the People Act, 1867"?]

(*a*) S. C. 13 *Q. B.* 707. (*b*) 1 *Lutw.* 398; S. C. 2 *C. B.* 111.

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Yes: and sect. 28 supports that view. It requires, in the case of poor rate due on 5th *January* remaining unpaid on 1st *June*, that unless the rate has been previously demanded, notice of the arrears be given.

[KEATING, J. *Bushell* v. *Luckett* seems an authority that the rate must be *complete*?]

Sects. 27 & 30 of "The Reform Act," 2 *Will.* 4, c. 45, seem to have had in view the same distinction. The first requires the occupier to have been rated to all rates "*made*," and also to have paid all rates "*payable*," &c. The second confers the power upon occupiers to claim to be rated, and to pay or tender the rate then *due*. Some weight ought surely to be given to the words "during the time of such occupation."

Dowdeswell, Q.C., in reply. The rate, in order to have a valid legal existence, must have fulfilled the requirements of the Statute of *Elizabeth*. It is not one before it is allowed by the Justices. Their concurrence is necessary as part of the machinery for creating it. It cannot be said to be legally made until that concurrence is expressed. No man is bound by it, nor can it be enforced. Later on, the Legislature made publication essential to the legality of a rate. In *Sibbald* v. *Roderick* (*a*), the Court held that a warrant of distress was wholly bad because issued for a single sum made up of regular rates, and of some others which had not been published, on the Sunday following the allowance by justices, as required by 17 *Geo.* 2, c. 3, s. 1. The defect in publication was

(*a*) 11 *A. & E.* 613.

treated as incurable. In *Fox* v. *The Overseers of Shaston St. Peter* (*a*), a poor rate unappealed against, but not duly allowed, was held to be void, and not merely irregular. *Maule*, J., said (*b*), "A rate not properly made, and unauthenticated, is no more than a piece of paper issued by private individuals, professing to tax persons without the authority of a statute."

BOVILL, C.J. This case has been very fully and ably argued, and we do not think it necessary to take further time to consider our judgment. There is no doubt that in some Acts of Parliament the making of a rate has been treated as distinct from the allowance of a rate. Whatever may be the effect and meaning of the word in the Acts of Parliament relating to the Poor Law, providing for the making of rates, the question we have to consider is, what is the sense in which the Legislature has, in the Act of 1867, used the words in the 3rd clause of the 3rd section—"Has during the time of such occupation" (*i.e.*, twelve months preceding 31st *July*) "been rated as an ordinary occupier in respect of the premises so occupied by him, within the borough, to all rates (if any) made for the relief of the poor in respect of such premises." There is great difficulty in construing the word "made," in the sense contended for by the appellant, and equal difficulty, in other cases, in the sense contended for by the respondent. Perhaps no construction could be placed upon the words which would, in every case, be satisfactory; but we must endeavour to place a reasonable construction on the language of the Act of Parliament, and the only conclusion at which I can

(*a*) 2 *Lutw.* 97; S. C. 6 *C. B.* 11. (*b*) 2 *Lutw.* 101.

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arrive is this, that when the Legislature has required that the person to be entitled to the franchise must be "during the time of his occupation," "rated as an ordinary occupier in respect of the premises," "to all rates made for the relief of the poor," it must be taken to mean completely made, that is, the rate must, both as regards the signature by the overseers and the allowance by the justices, be completed within the year of occupation. It is not necessary, in that view, to express any opinion as to questions which might arise under the Poor Laws, where the expression "making" a rate has been employed. Under these circumstances, it seems to me that the decision of the Revising Barrister was right, and ought to be affirmed.

BYLES, J. I am of opinion that the Revising Barrister was right, in either view of this case, whether the rate was made on the signature of the overseers, or whether the word includes complete signing, allowance, and publication.

KEATING, J., concurred.

BRETT, J. There is no doubt great difficulty in arriving at a satisfactory decision on this point. Looking, however, at the present statute, and sect. 27 of 2 *Will.* 4, c. 45, I am of opinion that the Legislature intended that the claimant should be rated to all rates made, *i. e.*, completely made, or made entirely within the year of occupation, between the 31st of *July* and the 31st of *July* in successive years. That appears to me the only safe conclusion we can come to.

Decision affirmed, without costs.

Attorneys—For Appellant, *Bower & Cotton*, agents for *Jones & Forrester, Malmesbury.*
For Respondent, *Deane & Chubb*, agents for *Chubb & Son, Malmesbury.*

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A poor rate is not "*made*" until it is signed by the overseers according to the 6 & 7 *Will.* 4, c. 96 (the Parochial Assessment Act).

Quære, whether when signed it in any case relates back.

The date of the heading to the rate is *primâ facie* the date of making, but not conclusive of the fact.

Therefore, where a rate was headed the 18th of *April*, 1867, but was not signed until a week before it was allowed by justices on the 16th of *August*, 1867, it was held to have been "made" during the qualifying period ending *July* 31st, 1868.

Quære, if a claim to be rated, made on behalf of another, but without his knowledge, can be ratified so as to make the claim valid; but *Held*, that the ratification must at least take place at a time when the person ratifying might lawfully have done the act.

Therefore, where a claim was made by the landlord on behalf of his tenant, but without his knowledge, some time after the 18th of *August*, 1867, that the tenant should be rated, but the only ratification set up was the adoption by the tenant of the act before the Revising Barrister after *July* 1868, it was held that there was no ratification sufficient to make the claim valid.

AT a Court held before the Revising Barrister for the borough of *Burnley, Harry Creeke* duly objected to the name of *Thomas Ainsworth* being retained on the list of voters for the township of *Habergham Eaves* in the said borough, whereupon the qualification of the said *Thomas Ainsworth* was proved in every respect, except as regarded rating and payment of rates. With respect to these two points, the facts as established by the evidence were as follows:—

A rate for the relief of the poor of the township of *Habergham Eaves*, in the borough of *Burnley*, was signed and allowed by two justices on the 16th *August*, 1867, and was published on the following Sunday. At the head of this rate, in the rate-book, were the following words: "An assessment for the relief of the poor of

the township of *Habergham Eaves*, in the county of *Lancaster*, and for other purposes chargeable thereon according to law, made this 18th day of *April*, 1867, after the rate of 1*s.* 8*d.* in the pound."

The heading at the top of each page of the rate-book was in these words and figures:—

"Township of *Habergham Eaves* Poor-Rate, made the day of , 186 ." At the end of the names in the rate-book was this declaration by the overseers: "We, the undersigned, do hereby declare that one of us, or some person in our behalf, has examined and compared the several particulars in the respective columns of the within rate, with the valuation list made under the authority of the 'Union Assessment Committee Act of 1862,' in force in this township, and the several hereditaments are to the best of our belief rated according to the value appearing in such valuation list."

"We do also declare that the within rate amounts in the whole to the sum of £4835 15*s.* 10*d.*"

This declaration was not dated, but it was signed *within a week before* the signature and allowance of the rate by the justices, which immediately followed it in the rate-book, and of which the following is a copy:—

"*Lancashire* } We, the undersigned, being two of her
to wit. } Majesty's Justices of the Peace, in and for the said county (one whereof is of the quorum), do hereby consent unto the foregoing rate or assessment.

"Dated this Sixteenth day of *August*, 1867.

"*James Folds*, jun.

"*John Heelis*, jun."

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Two days after the rate was thus signed and allowed, viz, on *Sunday*, the 18th day of *August*, in the same year, it was duly published according to law. The rate-book containing this rate was put in evidence for the purpose of proving that the said *Thomas Ainsworth* was duly rated to it, in respect of premises occupied by him in Low Water Street, in the said township, during the twelve months immediately preceding the last day of *July*, A.D. 1868, and in respect of which premises, so far as rating and payment of rates were concerned, his qualification was in dispute. Upon examining the rate book, the Revising Barrister found the name of *Thomas Ainsworth* in the column headed "Arrears," and the name of *John Holmes* in the column headed "Name of Occupier;" the latter name had been struck through with a pen, but was still legible, as under:—

Number. 1.	Arrears. 2.	3.	Name of Occupier. 4.	Name of Owner. 5.	Description of Property Rated. 6.	Name or Situation of Property. 7.
			(Other names.)	*John Dugdale & Bros.*	House	7, *Low Water Street*
				,,	,,	8 ,,
				,,	,,	9 ,,
				,,	,,	10 ,,
				,,	,,	11 ,,
				,,	,,	12 ,,
				,,	,,	13 ,,
8	*Thomas Ainsworth*		*John Holmes*	,,	,,	14 ,,

The rate book thus disclosing an ambiguity on the face of it, the Revising Barrister instituted an inquiry into the circumstances under which the name of *John Holmes* had been struck through and the name of

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Thomas Ainsworth inserted. In the course of that inquiry, the following facts were established by the evidence: *Thomas Ainsworth* was a tenant of *John Dugdale & Brothers*, a firm carrying on business in the borough of *Burnley*, and had occupied as such tenant, for more than twelve months previous to the 31st of *July*, 1868, the premises No. 14, Low Water Street, which appeared in the rate book the same time with his name and the name of *John Holmes*, as shown above. Sometime after the 18th of *August*, 1867, the day on which the above-mentioned rate was published, Mr. *Shaw*, a partner in the said firm of *John Dugdale & Brothers*, without mentioning the name of *Thomas Ainsworth*, and without in any way communicating with him or with any other of the tenants of the said firm on the subject, requested the assistant-overseer for the township of *Habergham Eaves*, in general terms, to insert the names of the tenants of *John Dugdale & Brothers* in the rate book containing the said rate of the 16th of *August*, 1867. The assistant overseer, anticipating some difficulty in ascertaining the names of the said tenants, acted upon a suggestion made by Mr. *Shaw*, and sent the rate-book above mentioned to the office of *John Dugdale & Brothers*. The names of *Thomas Ainsworth* and other tenants of Messrs. *Dugdale*, were inserted in pencil in the said rate book, whilst it thus remained in the office of the said firm, by one of their clerks, and when that had been done, the rate book was returned to the assistant overseer. The name of *Thomas Ainsworth*, and the names of the other tenants which had been written in, as above stated, in pencil, were then written in ink at the assistant overseer's office by his clerks, and the names of *John Holmes*

and others, which stood in the occupier's column in the rate-book when the said rate was signed, allowed, and published, were struck through with a pen after the manner above-mentioned. On the 10th of *December*, 1867, the rate due in respect of the premises occupied by *Thomas Ainsworth*, and also the rates due in respect of the other tenants of *John Dugdale & Brothers*, were demanded by the overseer, and paid by Mr. *Shaw*, by a cheque in the name of the firm for the sum of £350. In return for the above cheque, receipts were handed over to the firm, made out in the name of each tenant separately, and amongst them one in the name of *Thomas Ainsworth*. Messrs. *Dugdale* had paid their tenants' rates in a similar manner in full, and without any composition, for nearly forty years past; and there was a clear understanding between the tenants, when they entered into occupation, and the firm that the rates were included in the rents, and the tenants had to pay an additional rent in consideration of the firm undertaking to pay the rates. The overseer thus looking to the Messrs. *Dugdale* for payment, had been indifferent as to what names appeared in the rate-book as occupiers of the several premises belonging to the firm.

Upon this state of facts, it was contended on behalf of the objector—1st. That the rate signed and allowed by the justices on the 16th of *August*, 1867, and published on *Sunday*, the 18th *August*, in the same year, was "made" when it was signed, allowed, and published, and not before; and that consequently it was a rate "*made*" during the twelve months immediately preceding the 31st day of *July*, in the year of our Lord, 1868, and that it was necessary that the name of

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Thomas Ainsworth should have been inserted in it before it was signed, allowed, and published, as aforesaid, as having been rated in respect of the qualifying premises, No. 14, Low Water Street, so occupied by him during the twelve months immediately preceding the last day of *July* in the year 1868, in order to entitle him (in the absence of any sufficient claim and payment, or tender of rates due,) to have his name inserted in the list of voters for the township in the said borough.

2ndly. That the request of Mr. *Shaw* to the assistant-overseer, to insert the names of his tenants in the rate book, made as it was in general terms, and without any communication with *Thomas Ainsworth*, was not a sufficient claim to be rated on behalf of *Thomas Ainsworth*, within the meaning of 2 *Will.* 4, c. 45, s. 30.

3rdly. That even if it were a sufficient claim to be rated on behalf of the said *Thomas Ainsworth* within the meaning of that section, that nevertheless the subsequent payment of the rates on the 10th of *December*, 1867, in a gross sum by Mr. *Shaw*, as above stated, was not an actual payment or a sufficient payment within the meaning of that section to render such claim valid. It was, on the other hand, contended amongst other matters on behalf of *Thomas Ainsworth*, that the rate in question was "*made*" (within 30 & 31 *Vict.* c. 102, s. 3, subdivision 3) on the 18th day of *April*, 1867, and not when it was signed, allowed, and published in the month of *August*—that three acts are necessary in order to complete the "making" of a rate —1st. The assessment at a rate of so much in the pound; 2ndly. The signatures by the overseers, and the signature and allowance by the justices; and 3rdly.

The publication in due course according to law; that two only of the above three requisite acts for the making of a rate were done after the 31st day of *July*, 1867, within the twelve months immediately preceding the last day of *July*, 1868, and that the other requisite act, namely, the assessment at so much in the pound, having been done before the said 31st day of *July*, 1867, the rating in question was not altogether and entirely "*made*" within the twelve months aforesaid; that the signature of the overseers and parties in the month of *August*, 1867, must be taken as relating back to the date of the assessment, viz., to the 18th day of *April*, 1867, and that consequently it was not necessary that *Ainsworth* should have been rated to the rate in question at all, or should have paid any rates in respect of it. 2ndly. That supposing the rate in question was a rate to which *Thomas Ainsworth* ought to have been rated, that then the request of Mr. *Shaw* to the assistant-overseer to insert the names of Messrs. *Dugdale's* tenants in the rate book was, under the circumstances, a sufficient claim to be rated on behalf of *Thomas Ainsworth*, and that no rates being payable until they became due on demand on the 10th day of *December*, 1867, no payment or tender was necessary till that day. 3rdly. That supposing the rates became due on the publication of the rate in *August*, and not on demand, the subsequent payment of the tenants' rates so made on the 10th *December* by Mr. *Shaw*, was a sufficient payment by *Thomas Ainsworth*, within the meaning of 2 *Will.* 4, c. 45, s. 30, to render the said claim to be rated a valid claim, and to justify the overseers in putting the name of *Thomas Ainsworth* on the said rate.

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The names of 132 other persons, whose names were set out in a schedule hereto annexed, were objected to under similar circumstances. The Revising Barrister decided that the rate in question was made when it was signed, allowed, and published in the month of *August*, 1867, and not on the 18th day of *April* in that year, as was contended on behalf of *Thomas Ainsworth*; and that therefore it was a rate made during the twelve months immediately preceding the 31st day of *July*, 1868, and that *Thomas Ainsworth* ought to have been rated to it in respect of the premises so occupied by him before the rate was signed, allowed, and published, in order to entitle him (in the absence of a sufficient claim to be rated, and an actual payment or tender there and then of the rates due,) to have his name inserted in the said list of voters. 2ndly. That the request of Mr. *Shaw* to the assistant overseer, to insert the names of the tenants of *John Dugdale & Brothers* in the rate book was not, under the circumstances as stated above, a sufficient claim to be rated on behalf of *Thomas Ainsworth*. 3rdly. That the rate became due on the publication thereof and before demand by the overseer, and that even if the request of Mr. *Shaw* to the overseer to insert the names of *John Dugdale & Brothers'* tenants in the rate book, amounted in law to a sufficient claim to be rated, that nevertheless the subsequent payment of the tenants' rates by Mr. *Shaw*, by cheque, on the 10th day of *December* aforesaid, was not, under all the circumstances, a sufficient payment within the meaning of 2 *Will.* 4, c. 45, s. 30, to render such claim to be rated a valid claim, and expunged the name of *Thomas Ainsworth*, and of the said 132 other persons, from the said list. The appeals in

all the before-mentioned cases were ordered to be consolidated.

If the Court were of opinion that the Revising Barrister's decision on the first point was wrong, and that the rate in question was made on the 18th day of *April*, 1867, and not when it was allowed, signed, and published in the month of *August* in the same year, then the register was to be amended by retaining the name of *Thomas Ainsworth* and of the said 132 other persons on the said list of voters. If the Court, on the other hand, were of opinion that the decision on the above point was right, then the opinion of the Court was further requested—1st. Whether, under the circumstances as stated, there was any sufficient claim on behalf of *Thomas Ainsworth* to be rated to the said rate of the 16th day of *August*, 1867, within the meaning of the 2 *Will.* 4, c. 45, s. 30. 2ndly. Whether the payment by Mr. *Shaw* of the tenants' rates, and of the rates of *Thomas Ainsworth* amongst the number, was, under the circumstances stated above, a sufficient payment within the meaning of 2 *Will.* 4, c. 45, s. 30, to render such claim to be rated valid. If the Court was of opinion that the decision was wrong on both the above points, then the register was to be amended by retaining the name of *Thomas Ainsworth* and of the said 132 other persons on the said list of voters.

Quain, Q. C., for the appellant. The question is, when, within the meaning of sec. 3 of "The Representation of the People Act, 1867," a rate is "made?" It has already been decided (*a*) that the rate must, under

(*a*) *Ante*, p. 128.

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that section, be *completely* made within the qualifying year, and that the circumstance of the rate being allowed by justices and published within the qualifying year is not of itself sufficient. Here, no doubt, not only the allowance by the justices and publication, but also the signing by the overseers, was within the qualifying year. It is submitted, however, that the "making" of the rate is something antecedent to the signing by the overseers; and that the assessment and the drawing up of the rate preparatory to signing, forms, at all events, a part of the "making." The 6 & 7 *Will.* 4, c. 96, s. 2, has no doubt introduced a form of declaration which the parish officers are required to sign. That declaration, however, is not the "making" of the rate, but a subsequent formality which the Legislature has appended to it. Prior to the statute the Court would have held the rate to be "made" when the assessment was complete, and the statute in no respect alters what constitutes the "making." The words of the declaration are not "that the above assessment is to be the rate in force for the parish," but that "the several particulars specified in the respective columns of the above rate" are "true and correct, so far as we have been able to ascertain them." The framer of the enactment would never have used that language if he had meant the declaration to be the "making" of the rate. The 6 & 7 *Will.* 4, c. 96, did not introduce the practice of signing by the overseers: that was already the practice previously to the statute. But the statute has now prescribed a precise form and course of proceeding. In the heading to the form given in the schedule of that Act a date is inserted. Surely that was intended to fix the date of making the rate. It matters not when the rate was in fact signed. The form

in the schedule does not require a date to be added to the signing. The signing, whenever it was done, had relation back to the date given in the heading.

[BYLES, J. But the Act (*a*), in requiring the signing the declaration at the foot of the rate by the overseers, adds, "and otherwise the said rate shall be of no force or validity."]

If the Court hold the day of signing the declaration to be the date of the rate, there is no official record of it, for then the date which accompanies it is not according to the fact. That construction would necessarily lead to great inconvenience. The Revising Barrister, in this case, seems to have been unable to ascertain the day of signing the declaration.

[KEATING, J. Suppose a wrong date inserted in the heading; according to your argument its being there would make it conclusive?]

Primâ facie the date in the heading is the true date; but of course a mere error could be set right, though no alteration could be made after signature, allowance, and publication. *King* v. *Barrat* (*b*).

[BRETT, J. If not signed the rate is void?]

Yes; so if it be not published. *Sibbald* v. *Roderick* (*c*).

(*a*) Sect. 2.
(*b*) 2 *Dougl.* 465.
(*c*) 11 *A. & E.* 38.

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[KEATING, J., referred to *Fox* v. *Davis* (*a*).]

The case describes that the name *Thomas Ainsworth* was placed in the column headed "arrears," but in the fac simile which accompanies the case, it would appear to be written partly in one column and partly in the other; but as the Revising Barrister himself goes on to say that the rate book disclosed an ambiguity on the face of it, no importance need be attached to the first statement. He referred also to *Scadding* v. *Lorant* (*b*), and 17 *Geo.* 2, c. 38, s. 12.

Secondly, The claim by *Shaw* was a sufficient claim on behalf of the voter. In fact, from the nature of the arrangement between the landlord and tenant, the landlord was the tenant's agent to pay the rent. The claim subsequently by the tenants to vote was a ratification of the acts of their then agent, Mr. *Shaw*, in claiming on their behalf that they should be rated, and in paying the rate.

[BOVILL, C.J. What authority would an assistant overseer have to alter the rate?]

That point is not raised; but by the interpretation clause 6 *Vict.* c. 18, s. 101, the word overseer is extended —"shall extend to mean all persons who, by virtue of any office or appointment, shall execute the duties of overseers of the poor." *Points* v. *Attwood* (*c*).

[BOVILL, C. J. Is it not a condition precedent to

(*a*) 2 *Lutw.* 97; S. C. 6 *C. B. L.* 418.
11.
(*b*) 13 *Q. B.* 687, 706; 8 *H. of* 38.
(*c*) 2 *Lutw.* 117; S. C. 6 *C. B.*

ratification that the original act must have been one which the person ratifying might have done himself?]

That was laid down in *Bird* v. *Brown* (*a*), but there the interests of third persons would have otherwise been affected.

Manisty, Q.C. (*Shield* with him), for the respondent.

[The Court intimated that he need only address his argument to the question of ratification.]

The requirements of the statute must all be complete by the date of qualification, the 31st *July*, and if the claimant is not fully qualified by that time, nothing done by or for him afterwards can entitle him to the vote.

[He was stopped by the Court.]

BOVILL, C.J. I am of opinion that the Revising Barrister was right. The first question is, whether or not the appellant was "rated as an ordinary occupier in respect of the premises occupied by him to all rates made for the relief of the poor in respect of such premises." That depends on the question whether a rate purporting to be made before the 31st *July*, but signed by the overseers, allowed, and published in *August*, was made "after the 31st *July*." Mr. *Quain* contends that it was not, because on the face of the rate it bears date as of the 18th of *April*. In a recent case (*Jones* v.

(*a*) 4 *Exch.* 786.

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Bubb) (*a*), this Court held that the rate, within the meaning of the statute, must be a rate completely made, allowed, and published within the qualifying year. To meet that decision Mr. *Quain* endeavoured to draw a distinction between the making or beginning to make a rate and the signing the declaration by the overseers. It is very difficult to say when a rate is made, unless it be when the overseers put their hands to it and sign the declaration. Whatever difficulty might have arisen before "The Parochial Assessment Act" (*b*), is, I think, set at rest by that statute; because by section 2, after enacting that the form in the schedule shall be followed, and the particulars required by it stated, it expressly enacts that the overseers shall, before the rate is allowed by the justices, sign the declaration at the foot of the form, and that otherwise the rate shall be of no force or validity. In *Reg.* v. *Fordham* (*c*), the Court were of opinion that the precise form need not be followed, but that if the declaration were not signed the rate would be a nullity. I am of opinion that this rate was not "made" until the overseers signed it. Then is this signing to relate back to the date on the face of the rate? I agree with the argument that the date on the face of the rate is *primâ facie* the date of the making of it; but when it is shown that it was not, in point of fact, signed until *August*, the heading is not conclusive to prove the rate to have been made in *April*. The cases of *The King* v. *Barrat*, and *Lorant* v. *Scadding*, have no bearing upon the question. The next question is, whether, assuming that the rate was made during the quali-

(*a*) See the last case.
(*b*) 6 & 7 *Will.* 4, c. 96.
(*c*) 11 *A. & E.* 73.

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fying time of occupation, the claimant was duly rated to it within the time, and in the manner required by the statute. His name was not inserted in the rate originally, and therefore he was not rated in the ordinary sense of the word. Then recourse is had to sect. 30 of "The Reform Act" (*a*), and it becomes necessary to ascertain if its provisions have been complied with. By that section it is enacted "that it shall be lawful for any person occupying any house, warehouse, &c. . . . . to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers . . . . are hereby required to put the name of such occupier upon the rate for the time being." Now, in point of fact, a claim was made here by the landlord that the name of his tenant should be put on the rate, and the assistant overseer altered the name in the rate book with that intention, but was any claim made by the occupier? According to arrangement between the parties, up to that time the landlord had agreed to pay and paid the rates, and it was treated as a matter of indifference whose name appeared in the rate book. Now the claim in this case to be rated was not authorised by the tenant, but it has been contended that it was ratified by being adopted on behalf of the tenant before the Revising Barrister, but I think that, according to the case of *Bird* v. *Brown* (*b*), the ratification must take place at a time and place when the person ratifying

(*a*) 2 *Will.* 4, c. 45. (*b*) 4 *Exch.* 786.

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might lawfully have done the act himself. Here there was no ratification until the qualifying year had expired, and on that I base my judgment. It is, therefore, unnecessary to determine whether the rate was paid within the meaning of the Act.

BYLES, J. I agree that this rate was of no force or validity until it was signed. Whether there may, or may not, be any cases where the signing of the overseers has a retrospective effect, I express no opinion. It is not so for the purpose of this case. With respect to the ratification, I quite agree with all that has been said by my Lord, and I would observe that the duty of the Revising Barrister is defined by sect. 40 of the 6 *Vict.* c. 18. He is to require it to be proved that the person objected to *was* entitled *on the last day of July* then next preceding, to have his name inserted in the list of voters.

KEATING, J. I am of the same opinion on both points. I think this rate cannot, for the purposes of "The Representation of the People Act," be considered as made before the month of *August*, when it was authenticated by the parish officers. My own opinion is, that the dating and signature should, as nearly as possible be contemporaneous; and it is very desirable that, for the future, parish officers should be more particular in this respect. As to the second point, the claim to be rated must be the act of the will of the party claiming. It is not necessary to decide in this case, if any ratification would make it valid, but I think that no sufficient ratification has been proved to set up the original claim in this case.

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BRETT, J. I am of the same opinion, and I think that the Revising Barrister was clearly right. It is plain that within the meaning of "The Representation of the People Act, 1867," and our decision the other day (*a*), this rate was made within the qualifying year, and there is no pretence for saying that any valid claim to be rated was made. I doubt if any ratification, under the circumstances of this case, would be sufficient, but it is clear, on the principle referred to by the Lord Chief Justice, that the claim could not be ratified after the 31st of *July*.

Judgment for the respondent.

Attorneys—For the Appellant, *Johnson & Weatheralls*, agents for *T. Nowell, Burnley.*
For the Respondent, *F. F. Jeyes.*

(*a*) See the last case.

MEDWIN, Appellant; STREETER, Respondent.

Nov. 20—24; 1869, *Jan.* 18.

The qualification for the borough franchise must be perfected within the qualifying period. A claim to be rated under 2 *Will.* 4, c. 45, s. 30, made after *July* 31st, will not by relation back operate as a claim made in due time. Where, therefore, the occupier of a house who had not been rated, though he had paid all rates due in respect of it up to *January* 5, 1868, prior to 20th of *July*, on the 24th *August* served on the overseers a claim to be rated, it was held that the claim was too late.

Agnew v. *Reilly*, 2 *Ir. C. L. Rep. N. S.* 560, and *Mildmay* v. *Malcolmson*, 15 *Ibid*, 375, remarked on.

AT a Court for the Revision of the Lists for the borough of *Horsham*, *Henry Russell Streeter* claimed to have his name inserted in the list of persons entitled to vote in the election of a member for the said borough of *Horsham*, in respect of the occupa-

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tion by him of a house, No. 9, *Park Terrace West*, in the parish of *Horsham*, and within the said borough.

There is only one parish within the said borough, namely, the parish of *Horsham*, and the name of the said *H. R. Streeter* having been omitted by the overseers of the said parish from the list, he proved the service on the said overseers, on the 24th day of *August*, 1868, of a claim to have his name inserted in such list in respect of the occupation of the said house.

The said *Pilfold Medwin*, who was on the list of persons entitled to vote in the election of a member for the said borough, duly objected to the name of the said *H. R. Streeter* being inserted in the said list. The said *H. R. Streeter* had never been rated in respect of the said house, but he paid all rates due in respect of the said house up to the 5th day of *January*, 1868, prior to the 20th day of *July* following.

On the 24th day of *August*, 1868, the said *H. R. Streeter* served on the said overseers of the parish of *Horsham*, a claim to be rated in respect of the said house, and which claim was in the following form :—

"Claim to be Rated.

"To the Overseers of the Parish of *Horsham*.

"I hereby give you notice, that I claim to be rated to all rates made by you for the relief of the poor since the 31st day of *July*, 1867, in respect of a house situate in *Park Terrace West*, and numbered 9, in the parish of *Horsham*, in my occupation ; and I hereby tender payment of the full amount of all rates made previously to the 5th *January* last, and now due (if any).

"Dated this 24th day of *August*, 1868."

This notice was duly signed by the said *H. R. Streeter*.

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At the time of the service on the said overseers of the said notice of claim to be rated, there was only one poor rate in force within the said borough, which was made on the 15th day of *January*, 1868.

It was contended on behalf of the said appellant that the said claim to be rated, served by the said *H. R. Streeter* on the overseers, on the 24th day of *August*, 1868, was invalid and insufficient; that the said claimant was bound to prove that he was entitled to vote on the 31st day of *July*, 1868, and that a claim to be rated, dated and served subsequently to the said 31st day of *July* was too late and invalid, and did not entitle the said claimant to have his name inserted in the said list. The Revising Barrister thought the said claim to be rated was too late and invalid, but the Court of Common Pleas in Ireland having decided, in two cases—*Agnew*, app., v. *Reilly*, resp. (*a*), and *Muldowney*, app., v. *Malcolmson*, resp. (*b*)—under provisions contained in the Irish Reform Act, 13 & 14 *Vict.* c. 69, ss. 55 and 110, similar to those contained in the English Reform Act, 2 *Will.* 4, c. 45, s. 30, that a claim to be rated, dated and served in *August*, was sufficient and valid, and related back to the previous 20th day of *July*, and also had relation to the time when the rate was made, the Revising Barrister held the said claim of the said *H. R. Streeter* to be valid, and, he having in other respects proved his title to vote, inserted his name in the said list of persons entitled to vote for a member for the said borough.

The question for the opinion of the Court was, whether the said claim to be rated, dated and served by the said

(*a*) 2 *Ir. C. L. R. N. S.* 560. (*b*) 15 *Ib.* 375.

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H. R. Streeter on the said overseers, on the 24th day of *August*, 1868, was valid, and sufficient to entitle the said *H. R. Streeter* to have his name inserted on the said list of voters.

If the Court were of opinion that the said claim to be rated was valid, then the name of the said *H. R. Streeter* was to remain on the said list, otherwise his name was to be expunged therefrom, and the register was to be amended accordingly.

Seven other persons, whose names were contained in a schedule to the case, also claimed to have their names inserted in the said list of persons entitled to vote; and as the facts were in all the cases similar, the appeals were consolidated.

Keane, Q.C. (*Lumley* with him), for the appellant.

This question arises under "The Reform Act," 2 *Will.* 4, c. 45, s. 30, and is important on account of some views which have been entertained of the relation back and effect of some act done, after the expiration of the qualifying period, upon the qualification, as though it had been done before the lapse of the appointed time.

Bushell v. *Luckett* (*a*) was decided on this section. There a rate had been made from the 16th of *September* to the 16th of *December*, and another made on the 23rd of *December*, 1844, was allowed on the 3rd and published on the 5th of *January*, 1845. A claim was served by the claimant upon the overseers on the 27th of *December*, 1844, and it was held that until another rate had been perfected by allowance and publication, the last valid rate, that made in *September*, continued in force and

(*a*) 1 *Lutw.* 398.

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was the rate for the time being at the date of the claim. The rate for the time being, in this case, was that made on *January* 15. The demand, however, was made after the qualifying year had expired, namely, on the 24th *August*. It was therefore too late. The Judges in Ireland decided, in the cases referred to by the Revising Barrister, that the claim had a retrospective effect. The decisions were come to on the 13 & 14 *Vict.* c. 69 (*a*), which differs somewhat from sect. 30 of 2 *Will.* 4, c. 45. *Muldowney* v. *Malcolmson* was decided on the authority of *Agnew* v. *Reilly*, and in deference to that decision. There A. occupied premises in a borough, rated at £9, for twelve months preceding the 20th of *July*, 1864. All rates due were paid in his name; his mother, however, was rated in respect of the premises in the then last rate, made in *September*, 1863. He served a notice of claim to be registered in respect of the premises on the 4th of *August*, and a notice of objection to his claim was served upon him on the 20th of *August*. A. presented a claim to be rated in the rate book for *September*, 1863, to the Guardians of the Union, on the 31st of *August*. Held that A. was entitled to be placed on the register, and that the fact of his claim having been objected to before he claimed to be rated was immaterial, as the effect of the latter claim was to qualify him by relation on the 20th of *July* preceding.

In *Agnew* v. *Reilly*, a claimant had his qualification on the list of voters for a borough, for "a house, 11, *George's Lane*, and a house, 55, *Joy Street*," and it appeared he occupied, in immediate succession, the two houses for more than twelve months prior to the 20th of

(*a*) The Irish Reform Act, s. 110.

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July, 1852, and that he still continued to occupy the house in *Joy Street*, and had paid all poor rates due out of the premises; but in the last rate for the time being, *June*, 1852, the *Joy Street* house was rated in the name of another person than the claimant, at the net annual value of £12, and in the previous rate (*September*, 1851), the rating of the *George's Lane* premises was also in the name of another person, at a net annual value of £14. On the 4th *August*, 1852, the claimant served notice on the Guardians of the Poor to rate him by name in respect of the *Joy Street* premises, and it was held that the claim made on the 4th of *August* was made in proper time, inasmuch as the claimant was qualified by relation on the 20th of *July*, all his rates being then paid. In the Irish Act the claimant need only be on the last rate. In the English, he is required, by sect. 3 of "The Representation of the People Act, 1867," to be rated to all rates during the time of his occupation. Though no limit is contained in sect. 30 in point of time, surely reasonable promptitude is required in it and other cases under these Acts. Can this claim be said to be made in a reasonable time? In one of the Irish cases, it was held that the claim might be made after the qualifying year had passed. Could it be done as late as the Revising Barrister's Court? In sects. 38 and 40 of 6 *Vict.* c. 18, "on the last day of *July*" is the fixed date at which the qualification must be proved to have existed.

The sections upon the subject in the Irish Act, 13 & 14 *Vict.* c. 69, are 1, 5, 7, 110. They fix the 20th of *July* as the date.

"The Compounders Act," 14 & 15 *Vict.* c. 14, s. 1, requires, in a similar case, payment or tender on or before the 20th day of *July* in each year.

Malcolmson's case only rests on the authority of *Reilly's* case, being decided out of respect to it.

The claim here was made after the qualifying period had expired. *Ainsworth* v. *Creeke* (*a*) is opposed to the cases in the Irish courts. In *Reilly's* case it was said that it was no part of the duty of the Revising Barrister to inquire when the claimant was put on the rate if the claim had been allowed by the guardians; but *Erle*, J., in *Pariente* v. *Luckett* (*b*), said, "I think that the Revising Barrister was quite justified in asking for an explanation of the manner in which the rate was made, when an interlineation appeared on the face of it."

All the essentials of the qualification must, it is submitted, have occurred or been acquired within the qualifying year.

Pickering, Q.C., for the respondent. The late case of *Ainsworth* v. *Creeke* does not really apply. Taking the Reform Act, 2 *Will.* 4, c. 45, and "The Representation of the People Act, 1867," together, the intention of the Legislature was to enable a man to perfect the qualification required by the Acts, if through neglect or intention he had been omitted from the rate, on finding that to be the case, before the Revision. He must be rated, and have paid what was due. This man had paid all the rates due on the 5th *January* before *July* 20, but discovered that he had not been rated. The object of sect. 30 of 2 *Will.* 4, c. 45, was to meet such a case. The claimant is qualified through means of the Act of Parliament by the 31st *July*.

(*a*) *Ante*, p. 141. (*b*) 1 *Lutw.* 446.

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[KEATING, J. Suppose a rate made on 28th *July*, should not a man have some days to ascertain if he is omitted from the rate, and claim?

BRETT, J. You must look at it both ways. A man might intentionally keep his name off all the rates, and then come in and claim.]

The claim would suffice if made before the court for revision was held.

[BRETT, J. The effect of that would be, that in cases like this there would be an extension of six weeks time beyond that allotted to the others?]

Of what use would the power to inspect the rate between the 10th and last days of *August* be, if the appellant's contention be correct?

Keane, Q.C., in reply, examined the Irish cases cited by the Revising Barrister.

[BRETT, J. Sect. 110 of the Irish Reform Act, 13 & 14 *Vict.* c. 69, seems to be essentially different.]

It was for the Revising Barrister to ascertain whether the claimant was entitled on the last day of the qualifying period; yet not until twenty-four days after that time had elapsed, the voter perfected his claim.

Cur. adv. vult.

The judgment of the Court (*a*) was now delivered by

(*a*) BOVILL, C.J., BYLES, KEATING, and BRETT, JJ.

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BOVILL, C. J. In this case the claimant, *Henry Russell Streeter*, claimed to vote as the rated occupier of a dwelling-house in the borough of *Horsham*. The claimant had not been rated at all in respect of the house in question, but had, at some time before the 20th of *July*, 1868, paid to the overseer all rates which would have been due previous to the 5th *January*, 1868, in respect of the said house. After the 5th of *January*, viz., on the 15th of *January*, a rate had been duly made in the borough, but in it the claimant was not rated. On the 24th of *August*, 1868, the claimant, finding that his name was not in that rate, and never having previously claimed to be put upon that rate, served on the overseers a claim to be rated to all rates made since the 31st *July*, 1867, and in such claim stated that he tendered payment of all rates due prior to the 5th *January*, 1868.

On these facts, the Revising Barrister, contrary to his own opinion, but in deference to two cases decided in Ireland, held that the claimant was entitled to vote, and inserted his name on the register of voters.

It was contended before us, on behalf of the appellant, that the claimant was not duly qualified as a voter on the 31st of *July*, 1868, because he had not been rated to all rates made since the previous 31st of *July*, nor had then done anything declared to be equivalent to having been so rated; and that nothing done after the 31st *July*, 1868, could obviate the objection that he was not qualified on that day. It was contended, on behalf of the respondent, that the claim and tender of the 24th of *August* had relation back to the time of the making of any rate to which such claim applied, and put the claimant, in the present case, in

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the same position as if he had been rated on the 15th of *January*, 1868, in the rate then made and published.

The solution of the question thus raised depends upon the construction of the various enactments regarding the qualification and registration of voters. By 30 & 31 *Vict.* c. 102, s. 3, "Every man shall be entitled to be registered as a voter, &c., who (among other things) is, *on the last day of July* in any year, and has during the *whole of the preceding twelve calendar months*, been an inhabitant, occupier, &c., and has, *during the time of such occupation*, been rated, &c., to all rates (if any) made for the relief of the poor," &c. By statute 2 *Will.* 4, c. 45, s. 27, "no occupier shall be registered unless he shall have occupied such premises as aforesaid for *twelve calendar months next previous to the last day of July* in such year, nor unless such person, &c., shall have been rated in respect of such premises to *all rates, &c., made during the time of such his occupation*," &c. The collocation of phrases is different, but, reading the latter by the former statute, it seems that the true meaning of the later enactment is, that no man shall be registered unless he has been rated to all rates made during the twelve months previous to the 31st of *July* of the qualifying year. The claimant has not been so rated, and therefore, *primâ facie*, was not entitled to be registered as a voter. But by 30 & 31 *Vict.* c. 102, s. 56, "all laws, customs, and enactments now in force conferring any right to vote, or otherwise relating to the representation of the people in England and Wales, and the registration of persons entitled to vote, shall remain in full force, and shall apply, as nearly as circumstances admit," &c.; and by s. 59, "this Act,

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so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force relating to the representation of the people, and with the registration Acts," &c., and therefore it is necessary to consider whether the claimant, although he has not been rated, may not have done something which is equivalent, for the purposes of qualification and registration, to his having been rated.

By 2 *Will.* 4, c. 45, s. 30, "it shall be lawful for any person occupying, &c., to claim to be rated, &c., whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming, and actually paying or tendering the full amount of the rate or rates, if any, then due, &c., the overseers, &c., are hereby required to put the name of such occupier *upon the rate for the time being*; and, in case such overseers shall neglect or refuse so to do (*i. e.*, to put his name on the rate for the time being), such occupier shall, nevertheless, for the purposes of this Act, be deemed to have been rated, &c., *from the period at which the rate shall have been made*, in respect of which he shall have so claimed to be rated as aforesaid," *i.e.*, the rate for the time being. This seems to refer to a claim made at all events during the time the rate is current. This claim cannot effectually be made in respect of a previous rate, after a subsequent rate is made and published. This interpretation was acceded to by *Maule*, J., in *Bushell* v. *Luckett* (*a*).

By 14 & 15 *Vict.* c. 14, s. 1, "no person so claiming to be rated, and paying or tendering *on or before the 20th of July*, in each year, the full amount of the rate or

(*a*) 1 *Lutw.* 402; S. C. 2 *C. B.* 111.

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rates (if any) due in respect of such premises on the 5th of *January* preceding, shall be required to make any further claim in regard to any future rate, &c., but shall be entitled to be put on the list and to be registered as a voter," &c. This enactment, made by way of amendment to that last cited, applies to any claim properly made, before the 20th of *July*, to be rated to all rates made before such claim, and accompanied by payment or tender, before the 20th of *July*, of all rates due on the previous 5th of *January;* but the enactment does not dispense with a rating, or a valid claim to be rated, in respect not only of the rates made before, but also of those made after the 5th of *January*, before the claim, or before the 20th of *July*. It does not dispense with the necessity of the claim, in order to make it valid, being made in respect of a rate current at the time, and does not refer to a claim made after the 20th of *July*. Neither of these provisions, in terms, at all events, enables a claimant, by claiming after the 31st of *July*, to be rated in respect of a rate made previous to the 31st of *July*, to maintain that he was on the 31st of *July* qualified to vote by reason of having then been rated to all rates made during the previous year. These sections do not aid the contention of the respondent, or do away with the *primâ facie* disability arising upon the 3rd section of 30 & 31 *Vict.* c. 102.

If we look to the Registration Acts, the necessity of the qualification being complete on the 31st *July* seems more fully made out. The only jurisdiction or power which the Revising Barrister can properly exercise, is that which is given to him by the statutes under and by which his office is created.

By 6 *Vict.* c. 18, s. 7, the objection given, which is to

be answered by the claimant is, that every person upon the register for the time being for any county may object to any other person upon any list of voters for such county, *as not having been entitled on the last day of July then next preceding* to have his name inserted, &c. By sect. 15, the persons who may claim in boroughs as having been improperly omitted by the overseers, are those who can and shall claim as *having been entitled on the last day of July then next preceding to have their names inserted*, &c. This seems further to show, that under sect. 14 the persons whose names the overseers ought to insert are those who would be entitled on the 31st of *July*. By sect. 17, the power of objection in boroughs is to any person *not having been entitled on the last day of July next preceding* to have his name inserted, &c. By sect. 37, the Revising Barrister has power to insert in any county list the name of any person who has claimed, *in case it shall be proved that he was entitled on the last day of July then next preceding to be inserted*, &c. By sect. 38, the same limitation to the power of the Revising Barrister is imposed in boroughs. And by sect. 40, the section on which the action of the Revising Barrister mainly depends, it is expressly enacted that "when any person shall have been objected to by the overseer, or by any other person, &c., such Barrister *shall require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted*, &c.; and in case *the same* shall not be proved to the satisfaction of such Barrister, or in case it shall be proved that such person was *then* incapacitated by any law or statute from voting in the election, &c., such Barrister *shall*

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expunge the name of every such person from the said lists," &c.

It would surely require very specific words elsewhere to override the force of these specific enactments, and to authorise the Court to say that, although on the 31st of *July* the claimant would not have been entitled, yet by reason of something done by him after the 31st of *July* he is entitled, and that the Revising Barrister should not require it to be proved that the claimant was entitled on the 31st of *July*, and, even though it should be proved that he was not entitled on the 31st of *July*, should insert his name in or refuse to expunge it from the register of voters. The case of *Powell* v. *Bradley* (*a*) seems to show that, for some purposes at least, the 31st of *July* is the day on which the qualification must be complete.

It has, however, been argued that, if the construction contended for by the appellant be adopted, no practical effect can be given to sect. 16 of 6 *Vict.* c. 18, and the power therein given to inspect the rate book between the 19th and the last day of *August* is futile. It would seem, however, that such power of inspection, even in an extreme case, might be useful for the purpose of seeing what the overseer has done or omitted, even though a claim has previously been made, and for thus guiding a claimant as to the amount of evidence which will be required from him before the Revising Barrister. This argument seems hardly sufficient to override the express enactments above referred to. Convenience and safety seem to point to the same conclusion as that to be deduced from the words of the statutes. If that which it is asserted may be done after the 31st of *July* may be

(*a*) *Hop. & Ph.* 159; 34 *L. J., C. P.* 67.

then legally done, there seems nothing to prevent its being done even before the Revising Barrister in Court; and we have already substantially decided, in the case of *Ainsworth* v. *Creeke* (*a*), that a claim at that time would be too late.

It seems to us that the true construction of the English Statutes, and convenience and safety alike require that the qualification must be complete on the 31st of *July*. We are, however, met by authority to which we shall ever feel inclined and bound to pay the highest respect —the authority of the Irish Judges in the cases of *Agnew* v. *Reilly* (*b*) and *Muldowney* v. *Malcolmson* (*c*). We have carefully and anxiously considered those cases, as well as the statutes 1 & 2 *Vict.* c. 56, on which is founded the administration of the Poor Laws in Ireland, and 13 & 14 *Vict.* c. 69, on which the qualification and registration of voters in Ireland depend. We are bound to confess that there is so much similarity between many of the enactments in the English Registration Acts and the last mentioned Irish Statutes, that many of the reasons which have led us to the construction we feel bound to put on the English Acts, could hardly have permitted us to coincide with some of the remarks of the Irish Judges on the Irish Statutes in those cases; but, even in one of those cases, it seems to have been considered by some of the Judges that the claim must be made before the Court of the Revising Barrister is opened; and the administration of the system of poor law rating in Ireland is so different from that in England; and the qualification as to rating of voters, the formation of the lists of voters, and the machinery

(*a*) *Ante*, p. 141.
(*b*) 2 *Irish C. L. R. N. S.* 560.
(*c*) 15 *Irish C. L. R. N. S.* 375.

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for preparing them and taking the registration, are so different, and give rise to so many different considerations and arguments, that we do not feel called upon or authorised to discuss further the propriety of the ultimate decision in those cases upon the Irish Statutes. We confine ourselves to saying that having regard to the English Statutes, we, for the reasons before stated, are of opinion that the decision of the Revising Barrister in this case, given in deference to the Irish cases was wrong, and his own personal opinion was correct.

The decision of the Revising Barrister will therefore be reversed, and the register be amended accordingly.

Decision reversed.

Attorneys—For Appellant, *T. H. Strangways*, agent for *P. Medwin, Horsham.*

For Respondent, *Baxter, Rose, Norton & Co.*

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Although it is for the Revising Barrister to decide questions of fact, yet if he state them, and the grounds of his decision for the opinion of the Court, it will review his decision.

Where an objector to a county vote stated his "(place of abode as described on the register)" "22, *Southampton Street, Bloomsbury, London, W.C.*" and under it his "(present place of abode)" "110, *Guildford Street, Russell Street, W.C.*," and the case found that there was no *Guildford Street, Russell Street*, but there was a *Guildford Street, London, W.C.*

AT a Court holden on the 26th day of *September*, 1868, for the revision of the list of voters for the parish of *Deal*, in the polling district of *Deal*, the names of *Edward Appleton* and *Thomas Wilmhurst* were objected to as not entitled to be registered or to vote. The objector, *Frederic Norris*, produced documents purporting to be duplicates of notices sent by him by post to the said *Edward Appleton* and *Thomas Wilmhurst*, under sects. 100 & 101 of 6 *Vict.* c. 18, stamped by the postmaster at *Charing Cross*, which duplicates were regular in all respects, and wherein the place of the abode of the said objector, as stated on the register, and his true, then present place of abode, were described thus:—

"(Signed) FREDERIC NORRIS

"(Place of abode as described on the register),

"22, *Southampton Street, Bloomsbury, London, W.C.*,

"(Present place of abode),

"110, *Guildford Street, Russell Square, W.C.*"

Whereupon, in disproof of such service, the agent for *Appleton* and *Wilmhurst* produced the original notices which had been actually received by each of them in

***Held*, first, that the omission of *London* in the latter description might be aided by the mention of it earlier. Secondly, that "*Russell Street*" might be rejected.**

***Held*, also, that if the objector fail to prove at the revision the duplicate notice under 6 *Vict.* c. 18, s. 100, and the notice served on the voter be produced, the objector may have recourse to the latter to prove the service.**

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due time by post, which corresponded in all respects with the alleged duplicates, except as to the places of abode of the objector, which were described thus:—

"(Signed) FREDERIC NORRIS.
"(Place of abode described on the register),
"22, *Southampton Street, Bloomsbury, London, W.C.*,
"(Present place of abode),
"110, *Guildford Street, Russell Street, W.C.*"

The Revising Barrister decided that due service of the notices of objection upon *Edward Appleton* and *Thomas Wilmhurst* had not been proved, inasmuch as the stamped documents produced by the objector, in proof of such service, were not duplicates of the original notices as required by ss. 100 & 101 of the 6 *Vict.* c. 18, but differed therefrom in an essential particular, namely, the true then present place of abode of the said objector (held necessary to be stated therein by the Court of Common Pleas in the cases of *Melbourne* v. *Greenfield* (*a*) and *Courtier* v. *Bright* (*b*)), consequently the objector had not complied with the regulations prescribed by the said statute for the service through the post-office of such notices, such regulations requiring that the notice sent to the person objected to, and the stamped document produced by the objector to prove due service thereof, should be duplicates. Upon such decision being given, the objector claimed to take up the notice so produced by the agent for *Edward Appleton* and *Thomas Wilmhurst* (in disproof of due service of notices of objection upon them), and to make them

(*a*) *Keane & Grant, Reg. Cas.* 261. (*b*) *Id.* 475.

evidence on his the objector's behalf, that a proper formal notice of objection had been duly served upon and received by *Edward Appleton* and *Thomas Wilmhurst*, from him the said *Frederic Norris*, and he contended that the words "*Russell Street*" were surplusage, and that there was no other No. 110, *Guildford Street*, in *London*.

Upon such contention the Revising Barrister decided —1st. That the last-mentioned original document or notice, although so produced by or on behalf of the persons so objected to for the particular purpose of disproof before mentioned, could not, under the circumstances, be made evidence to prove due service of a notice of objection upon either of them.

Because the objector having elected to adopt the particular mode of service of notices by post pointed out and regulated by the said 100th sect. of 6 *Vict.* c. 18, and having failed in proving the same, had no longer any *locus standi* in the Court of Revision.

And because no mode of service of any notice of objection by post is provided by the said statute, except in conformity with and subject to the regulations prescribed by ss. 100 & 101.

2ndly. That the last-mentioned notices themselves were upon the merits informal and invalid, inasmuch as the description therein of the objector's then true present place of abode was incorrect, defective, misleading, and not set forth so as commonly to be understood, especially by persons resident at a distance from *London*.

Because the same do not state in what city, town, or place, *Guildford Street*, *Russell Street*, *W.C.*, is situate.

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Because in fact there is in ordinary parlance, no such street within the western central postal district of *London*, as *Guildford Street*, *Russell Street*, there being only one *Russell Street*, simpliciter therein, namely *Russell Street*, *Covent Garden*, which is a long distance from *Guildford Street*, and has no connection therewith, and another street called *Great Russell Street*, which is also a considerable distance from *Guildford Street*, and does not adjoin thereto, and is in another parish.

On these grounds the Revising Barrister decided that the said notices of objection were wholly invalid, and retained the names of *Edward Appleton* and *Thomas Wilmhurst* on the list of voters for the parish of *Deal*.

If the Court were of a contrary opinion, the names of *Edward Appleton* and *Thomas Wilmhurst* ought to be struck out of the list.

The appeals in each case depended upon the same point of law, and were consolidated.

Manisty, Q.C., for the appellant. The decision as to the proof of the notice is obviously wrong. Although the statutory mode of proof allowed by 6 *Vict.* c. 18, s. 100 failed, there was nothing to prevent the notice being proved in the ordinary way.

Then as to the sufficiency of the notice, which is given under 6 *Vict.* c. 18, s. 7. One objection is that in giving the present place of abode *London* is not repeated. Surely, however, it is a common form of words which could not be misunderstood to say, 22, *Southampton Street, Bloomsbury, London, W.C.*, was my abode, but I am now gone to 110, *Guildford Street, W.C.*, *Sheldon* v. *Flatcher* (*a*) is in point. There a notice of objection was

(*a*) 2 *Lutw.* 11; S. C. 5 *C. B.* 14.

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signed "*John Flatcher*, of 5, *Sherborne Street*, on the list of voters for the parish of *Cheltenham*." It was held that "5, *Sherborne Street*," meant "5, *Sherborne Street, Cheltenham*," and that the description of the objector's place of abode was sufficient. As to the other point that *Russell Street* has been inserted by mistake instead of *Russell Square*, that could not have misled, as there is no such place as *Guildford Street, Russell Street*, and there is but one *Guildford Street, W.C.* Had there been two *Guildford Streets, W.C.*, that might have been different.

[BYLES, J. Have not you the difficulty to contend with, that the Revising Barrister has decided the facts?

KEATING, J. The Revising Barrister states his reasons and refers the propriety of those reasons to us.]

T. Atkinson, Serjeant, for the respondent, after abandoning the point as to the proof of the notice. The objector is bound to state his true place of abode. *Knowles* v. *Brooking* (*a*), *Melbourne* v. *Greenfield*(*b*).

[BOVILL, C. J. That is not disputed. The question is whether he has given a sufficient description of his place of abode?]

The notice is misleading in not stating where "*Guildford Street, Russell Street, W.C.*," is. A person living in *London* might know that there is no such place as *Guildford Street, Russell Street*, in *London*, and that

(*a*) 1 *Lutw.* 461; S. C. 2 *C. B.* 226.

(*b*) *K. & G.* 261; S. C. 7 *C. B., N. S.* 1.

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it was a mistake for *Guildford Street, Russell Square,* but how would a villager in *Kent* be aware of it? *Sheldon* v. *Flatcher* (*a*), is therefore not in point, since that was the case of a borough vote. There might be a *Guildford Street, Russell Street, W.C.*, down in *Bristol*, or elsewhere out of *London*.

[BRETT, J. That argument would apply equally if the description were "*Guildford Street, Russell Square, W.C.*"]

That would equally be an insufficient description, as the notice does not say it is in *London*. The question was one of fact for the Revising Barrister, and he has decided it against the appellant. *Woollett* v. *Davis* (*b*) is in the respondent's favour.

[KEATING, J. That case only decided that the description could not be aided by resorting to the register.]

Manisty, Q.C., in reply. The question is, did the description give such information that the objector's residence could easily have been found? *Thackway* v. *Pilcher* (*c*). It is submitted that it did.

BOVILL, C. J. I am of opinion that the decision of the Revising Barrister must be reversed. The general rule, no doubt, is that questions of fact are for his decision, and although there is sometimes difficulty in saying what is matter of fact, and what matter of law,

(*a*) 2 *Lutw.* 11; S. C. 5 *C. B.* 115.

(*b*) 1 *Lutw.* 607; S. C. 4 *C. B.* 14.

(*c*) *Hopw. & Ph.* 382; S. C. *L. R.* 2 *C. P.* 100.

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I think that unless we can see clearly that the question before us is not one of fact, we should be loth to interfere with the Revising Barrister's decision. But here, as I read this case, the Revising Barrister has stated his reasons for his decision, and then referred the sufficiency of those reasons, as matter of law, to us. I think that on neither ground relied on can his decision be supported. We must construe this notice by what appears on its face, and not by anything extraneous. The notice says, "(place of abode as described on the register,) 22, *Southampton Street, Bloomsbury, London, W.C.*" And then there immediately follows, "(present place of abode) 110, *Guildford Street, Russell Street, W.C.*" I think the ordinary and reasonable intendment from the language of that notice is that the present place of abode is in *London*, within the district *W.C.* On this point I think the case is not distinguishable from *Sheldon* v. *Flatcher* (*a*), where, in the absence of any description where *Sherborne Street* was, the Court looked to other parts of the notice to ascertain it. So here I think we also should refer to what appears elsewhere on the face of the notice.

Then as to the second point. It is true the words are "*Guildford Street, Russell Street,*" but they are "*Guildford Street, Russell Street, W.C.,*" and it appears there is but one *Guildford Street, W.C.;* and how can it affect the question that by mistake "*Russell Street*" has been written instead of "*Russell Square?*" I think that is not such a misdescription as can invalidate the notice. Neither ground relied on by the Revising Barrister can be supported, and I fail to see any other.

(*a*) 2 *Lutw.* 11; S. C. 5 *C. B.* 14.

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BYLES, J. I am of the same opinion. In *Sheldon* v. *Flatcher* (*a*), *Coltman*, J., said, "It is not necessary for the Barrister to give his reasons, but if we saw enough on the face of the document to show that the statement was not reasonably sufficient, we should say as a matter of law that his decision was wrong." Here the Revising Barrister has given his reasons, and desired our opinion on their validity; and I think they are not valid. This appears to me an *à fortiori* case compared with *Sheldon* v. *Flatcher*.

KEATING, J. If this notice had not contained the objector's former address, I own I should have felt considerable difficulty; but I think the whole description must be looked at, and we are to say whether the person objected to would understand it. I think without any strain of language we may connect the word *London* in the former address with the description of the present place of abode, and that no one would be misled; nor does it appear that any one was misled here. We do not infringe the rule that the Barrister is the sole judge of fact; but here having stated his reasons he has submitted their propriety to us, and we differ from him. The other point was scarcely argued.

BRETT, J. In *Woollett* v. *Davis* (*b*), it was attempted to aid the notice by having recourse to the register; and it was held that that could not be done. But in *Sheldon* v. *Flatcher* (*c*), it was held that the description could be aided by referring to another part of the notice. Further

(*a*) 17 *L. J. N. S. C. B.* 38; S. C. 2 *Lutw.* 18.

(*b*) 1 *Lutw.* 607; S. C. 4 *C. B.* 115.

(*c*) 2 *Lutw.* 11; S. C. 5 *C. B.* 14.

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that case shews that although in general the sufficiency of the description is a question of fact, if on the face of the notice the Court can see that it was sufficient, it will act on that, whatever the Revising Barrister may have decided. The present case is within the principle of *Sheldon* v. *Flatcher*, and not within that of *Woollett* v. *Davis*.

Decision reversed.

Attorneys—For Appellant, *T. Hoskins*.
For Respondent, *Hughes & Muskett*.

CLARK, Appellant; BROWN and Others, Respondents.

Nov. 20.

The condition imposed by sect. 14 of "The Boundary Act, 1868," on an occupier to entitle him to be registered under that section, *viz.*, "that he has been *duly rated* as an ordinary occupier *to all poor rates* in respect of the premises, made after the passing of this Act," does not apply to a case where, at the time of the registration, no poor rate had been made since the passing of the Act.

THE case stated, that at a Court held by the Revising Barrister for the borough of *Denbigh*, *Richard Clark* duly objected to the name of *Robert Brown* being retained in the list of voters for the said borough.

The following facts were established by the evidence: The said *Robert Brown*, at the time of the passing of "The Boundary Act, 1868," was the occupier of a dwelling-house within the township of *Bersham*, for which at the time of the passing of the said Act the owner was liable to be rated, instead of the occupier. By reason of an alteration of the boundary of the said borough by the said Act, the said *Robert Brown* would

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have been entitled to be registered as an occupier at the then next registration of parliamentary voters for the said borough, if he had been rated to the poor for the whole of the required period. No poor rate was made for the said township of *Bersham* after the passing of the said Act up to the time of the registration of parliamentary voters next after the passing thereof. The said *Robert Brown* had not claimed to be rated to the relief of the poor in respect of the premises so occupied by him, nor had the overseers of the said township put his name upon the rate for the time being. The whole of the rate made last before the passing of the said Act had been collected before the passing thereof.

It was contended on behalf of the objector that in order to entitle the said *Robert Brown* to be registered as a voter in respect of the said premises under "The Boundary Act, 1868," sect 14, it was necessary that he should have claimed to be rated under 2 *Will.* 4, c. 45, s. 30.

Other appeals were consolidated.

The Revising Barrister decided that the said *Robert Brown*, and the twenty other persons in the schedule were entitled to be registered under "the Boundary Act, 1868," s. 14, and retained the names of the said *Robert Brown*, and of the said twenty other persons in the said list.

If the Court were of opinion that this decision was wrong, the register was to be amended by erasing the names of the said *Robert Brown* and of the said twenty other persons from the said list.

Day, for the appellant. The question turns on the

14th section of "The Boundary Act, 1868." That section enacts, that "where by reason of an alteration of the boundary of any borough by this Act, the occupier of a dwelling-house or other tenement (for which the owner at the time of the passing of this Act is liable to be rated instead of the occupier) would be entitled to be registered as an occupier at the next registration of parliamentary voters if he had been rated to the poor rate for the whole of the required period, such occupier shall, notwithstanding he has not been so rated, be entitled to be registered, subject to the following condition :—

"That he has been *duly rated* as an ordinary occupier *to all poor rates* in respect of the premises made after the passing of this Act."

The condition there imposed is a condition precedent to the right to vote, and not in defeasance of it; and it has not been complied with. On principles of strict construction it is submitted that it is no answer that since the Act passed no poor rate had been made.

Sir *G. Honyman*, Q.C., for the respondents, was not called upon.

The Court (*a*) being unanimously of opinion that there was nothing in the objection,

Decision affirmed with costs.

Attorneys—For Appellant, *Blake & Hughes.*
For Respondents, *Thomas & Hollams.*

(*a*) BOVILL, C.J., BYLES, KEATING, and BRETT, JJ.

CUTHBERTSON, Appellant; HAINS, Respondent.

Nov. 24.

The exclusive occupier of rooms in a house claimed to be rated for part of a house. His name was accordingly inserted, with others, in the occupiers' column of the rate book, but no separate rate was carried out against his name:—*Held*, that he could not be deemed by virtue of sect. 30 of 2 *Will.* 4, c. 45, separately rated within sect. 61 of 30 & 31 *Vict.* c. 102. (The Court refusing to infer payment or tender of the rates.)

THE case stated, that at the Court held, &c., before the Revising Barrister for the City of *London*, *William Cuthbertson*, on the list of voters, &c., duly objected to the name of the respondent (and others in the schedule) being retained on the list of persons entitled to vote for the election of members for the City of *London* in respect of the occupation of dwelling-houses.

The respondent occupied exclusively and as sole tenant for his dwelling certain rooms in a house, *No.* 2, *St. James's Place*, in the parish of *St. James, Garlick Hithe*, in the City of *London*.

Such rooms were not so structurally severed from the rest of the building as to constitute of themselves a house.

The respondent had the exclusive control over the doors which shut the said rooms off from the adjoining passage, and he had under or by virtue of his tenancy a right of way over the passage from his rooms to the house door, and in common with the other occupiers resident in the house perfect control over the house door, so as at all hours to command the ingress and egress from and to the street.

The respondent had in due time served upon the overseers of the parish of *St. James, Garlick Hithe*, a claim to be rated in respect of the said premises in the following form:—

"To the Overseers of the Parish of *St. James, Garlick Hithe.*

"I hereby give you notice that I occupy a part of a house at *No.* 2, in *St. James' Place*, in your parish, in successive occupation from , and I claim to be duly rated for the same to the rates made for the relief of the poor in your parish pursuant to the English Reform and Parliamentary Registration Acts.

(Signed) "JAMES HAINS,

"Residing at *No.* 2, *St. James Place.*"

In pursuance of such claim the overseers of the said parish had entered the name of the respondent in the occupiers' column of the rate book for the said parish, bracketed jointly with the other occupiers of the said house; and in the appropriate columns, in line with the said names the rental, rateable value, and rate in the £ of the whole house alone appeared.

No separate rating or assessment was carried out opposite the name of or with reference to the respondent.

In all other respects the respondent was proved to be qualified to be registered.

It was objected that having regard to the above facts, the subject of the respondent's occupation was not a part of a house occupied as a separate dwelling, and separately rated to the relief of the poor within the meaning of the 61st section of "The Representation of the People Act, 1867."

The Revising Barrister held, regarding the above facts, that the respondent had by his occupation of the said premises in manner aforesaid occupied part of a house as a separate dwelling, and that the same must be deemed to have been, and had been, separately rated to

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the relief of the poor, and that therefore he had been an inhabitant occupier of a dwelling-house within the meaning of the said Act, and retained the respondent's name on the list.

The question for the opinion of the Court was, whether or not the Revising Barrister rightly decided that the respondent was entitled to have his name retained on the register.

Prentice, Q.C., for the appellant. The respondent is not within 30 & 31 *Vict.* c. 102, ss. 3 and 61, the inhabitant occupier of a "dwelling-house." If upon the facts of this case the Court should hold that he is, it will in no case be necessary for any one to claim as a lodger. Proof of value, and of the other requirements of the lodger franchise will not be necessary, for the lodger will in every case register as an inhabitant occupier. The case expressly finds that the rooms were not so structurally severed as to constitute of themselves a house. The respondent has claimed to be rated for part of a house, with a view of bringing his case within the definition of a "dwelling-house" in sect. 61 of the 30 & 31 *Vict.* c. 102. That section defines "dwelling-house" to "include any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor." The respondent in his claim to be rated did not specify for what part of the house he made the claim, nor has he (as appears from the case) ever, in fact, been separately rated.

Underdown, for the respondent. The case finds that the respondent in due time claimed to be rated, and that the overseers placed his name on the rate. Therefore under sect. 30 of the 2 *Will.* 4, c. 45, he must

be "deemed to have been rated" within the meaning of that section. The section enacts, that " . . . . . upon such occupier so claiming, and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless for the purposes of this Act be deemed to have been rated to the relief of the poor in respect of the premises from the time at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid."

[BOVILL, C. J. How do you show that the respondent has paid or tendered the rates as is there required?]

The case finds, "that in all other respects the respondent was proved to be qualified to be registered." Moreover the Court will presume that the overseers in placing the respondent's name on the rate have done their duty—*Goodsell* v. *Innons* (*a*)—and consequently that the respondent has paid or tendered the rate.

[KEATING, J. The respondent can hardly have made a tender of the rate, inasmuch as no *separate* rate appears to have been made.]

BOVILL, C.J. The case clearly presents no materials to show the respondent was *separately rated*; but in

(*a*) *K. & G.* 24; S. C. 17 *C. B.* 295.

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saying this I do not mean to express an opinion that he was separately rateable. The decision of the Revising Barrister must be reversed.

BYLES, J., KEATING, J., and BRETT, J. concurred.

Decision reversed.

Attorneys—For Appellant, *T. R. Bailey.*
For Respondent, *Travers, Smith, & De Gex.*

CUTHBERTSON, Appellant; BUTTERWORTH, Respondent.

Nov. 24.

A "room" in a set of chambers, not communicating directly with the other rooms in the set, but opening into a common vestibule, and thence communicating by a door with a landing on a public staircase is not such a subject of occupation as will, under sect. 27 of 2 *Will.* 4, c. 45 confer a vote on the occupier, notwithstanding that, in common with his landlord, he has perfect control over the outer door.

THE case stated, that at the Courts held for the revision of the list of voters for the Inner and Middle Temple, in the City of *London*, before the Revising Barrister for the City of *London*, *William Cuthbertson*, on the list of voters, &c., duly objected to the names comprised in the schedule (*a*) of the persons who are entitled to vote in the election of members for the City of *London* in respect of the occupation of

(*a*) In the schedule referred to the nature of the respondents' qualification was stated as "chambers."

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chambers in the said Inner and Middle Temple, when the Revising Barrister decided that each of them was entitled to have his name inserted or retained in the list, and declared *William Henry Butterworth* to be respondent.

The landlord of the respondent rented a set of chambers in the Inner Temple.

This set of chambers formed part of one of the floors of the building in the Temple, which part is so structurally severed from the rest of the building as to be of itself a house.

This set of chambers consists of two rooms and a vestibule; each room is severed from the other, there being no direct communication between the two. Each communicated by its own door with the vestibule, which communicated with the landing on a public staircase by a door.

The subject of the respondent's occupation was one of these rooms.

The respondent had occupied for the statutory period exclusively and as sole tenant this room, over the door of which communicating into the vestibule he had exclusive control.

Under or by virtue of his tenancy he had a right of way over the vestibule, and in common with his landlord, who occupied the other room, perfect control over the door communicating with the landing, so as at all times to command free ingress and egress to and from the room which he occupied as aforesaid from and to the said landing.

The respondent was a barrister-at-law.

The respondent occupied the said room for the sole purpose of transacting the business which came to him

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in his pursuit of the profession of a barrister, and not for a dwelling-house.

It was objected that having regard to the above facts, the subject of occupation of the respondent was not sufficient in kind to qualify him as tenant within any of the qualifications enumerated in the 27th section of the Act 7 *Will.* 4, c. 45.

The Revising Barrister held regarding the above facts that the respondent occupied as tenant a sufficient tenement to entitle him, if duly registered, to vote in the election of members for the City of *London* within the meaning of the 27th section of the said Act.

The question upon which the judgment of the Court was requested was whether or not the Revising Barrister did or did not rightly decide that the respondent (and the others in the schedule) were entitled to have their names inserted on the register of voters for the said City of *London*.

Prentice, Q.C., appeared for the appellant.

The Court called upon—

Underdown for the respondent. The question is, whether the subject of the respondent's occupation (which was a room in a set of chambers in the Temple) was such as to qualify him to vote under the 27th section of the 2 *Will.* 4, c. 45. It is submitted upon the facts stated in this case that it was a "building" within the meaning of that section. *Wright* v. *The Town Clerk of Stockport* (*a*), decided that where a factory was let out

(*a*) 1 *Lutw.* 32; S. C. 5 *M. & G.* 33.

in rooms (each forming a separate portion of the factory, and exclusively occupied), each room was such a "building," it making no difference that the approach to some of them was by a common staircase leading from an outer entrance door. The present is a similar case. Here, as in that case, the respondent's room (which opens into a common vestibule communicating with the street by an outer entrance door) is structurally severed, and exclusively occupied by the respondent as tenant. *Bryan Kearney's* case (*a*,) is also a case not distinguishable from the present in its facts. There again the subject of the claimant's occupation was a single room not opening directly into the street but into a hall, the hall having an outer door connecting it with the street. That the occupation of part of a house may confer a right to vote under sect. 27 is well settled, provided there be independent occupation and actual severance. *Henrette* v. *Booth* (*b*). Assuming these conditions to exist, the existence or non-existence of an outer door at the end of a common passage leading from the "building" is not material. *Henrette* v. *Booth* (*b*), *Bryan Kearney's* case (*a*). In *Wilson* v. *Roberts* (*c*) there appears to have been no structural severance, and the decision proceeded on that ground. He referred also to *Toms* v. *Luckett* (*d*).

Prentice, Q.C., for the appellant, was not called upon.

BOVILL, C.J. I am of opinion that no case that

(*a*) *Alcock's Reg. Cas.* 22,

(*b*) *Hopw. & Ph.* 23; S. C. 15 *C. B., N. S.* 500.

(*c*) *K. & G.* 430; S. C. 11 *C. B., N. S.* 50.

(*d*) *Lutw.* 19; S. C. 5 *C. B.* 23.

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has been cited goes the length of showing that a room in a set of chambers (which is the subject of the respondent's occupation) is a house or building within sect. 27 of the 2 *Will.* 4, c. 45. The decisions no doubt show that where a set of chambers with one outer door is structurally separate, and used as a separate dwelling, that may constitute a house within the section. But here the description shows that what the respondent occupied was not a house or building, but part of a house only, whether we look at its structural nature, or the mode in which it was occupied. The decision of the Revising Barrister must be reversed.

BYLES, J., KEATING, J., and BRETT, J., concurred.

Decision reversed.

Attorneys—For Appellant, *J. R. Bailey.*
For Respondent, *Travers, Smith, & De Gex*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

HILARY TERM, 1869,

IN THE

THIRTY-SECOND YEAR OF QUEEN VICTORIA.

ROBINSON, Appellant; AINGE, Respondent.

Jan. 18.

The respondent (a member of a friendly society) was, under one of its rules, entitled to and in the receipt of, the sum of 4*s.* per week as an annuity for life (if the funds would admit) "arising and to be paid out of the *property* of the society." Out of the funds of the society (consisting of rents of freehold land vested in trustees, and contributions, and fines of members) expenses, allowances to sick, and funerals of deceased members, were paid, and there was sufficient from the rents for the payment of the annuities:—*Held*, that "property" in the above rule denoted the whole property of the society, and was not restricted to its realty, and that the respondent had no such direct interest in the realty as would entitle him to a vote.

AT the Court held at *Northampton*, on the 25th of *September*, 1868, for the revision of the list of voters for the southern division of the county of *Northampton*, for the parish of *St. Peter, Northampton*, *Francis Charles Robinson*, the younger, duly objected to the name of *Thomas Ainge* being retained on the list of voters for the said parish of *St. Peter*. The "nature of qualification" of *Thomas Ainge* appeared upon the list of claimants as "interest arising from freehold houses."

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The facts of the case, as proved, were as follows:—

That there is a benefit society called the "Friend in Need," established at *Northampton*, for the purpose of raising from time to time by subscription a stock or fund for the mutual relief and maintenance of all the members thereof in old age, sickness, or infirmity, instituted in the year 1817, the rules of which society were enrolled on the 2nd *June*, 1852, and were to be taken as part of the case.

It appeared that the funds of the society had been partly laid out in the purchase of landed property previous to the 23rd of *July*, 1855, and that the revenues of such land at the present time amounted annually to the sum of £500, subject to a mortgage at £5 per cent on £1,800, thereby reducing the net revenue from land to the sum of £435, or thereabouts. In the month of *January* last, the society consisted of 48 members only, of whom 20 are annuitants. The freehold property has been conveyed by different purchase deeds to the trustees of the society.

The other funds of the society consist in monthly periodical payments from every member, whether in receipt of relief or not.

The society is managed by a treasurer, secretary, trustees, president, stewards, and a committee, consisting of not less than 11 members, and on any question being put, the stewards deliver to each member two bits of tin provided for the purpose, the meaning and intent of which is explained at the time of the delivery. And any member withholding or dropping them, so that when the numbers are delivered back again they are not equal, shall for every offence be fined 2*s.* 6*d.*, and any member refusing to pay shall thereby be excluded from the

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society. It was also proved that the members of the society meet once every month to pay their contributions into the hands of the treasurer, and are liable to certain penalties in default, and the rules authorise different payments on stated scales for the relief of sick members. The rules also contain certain powers, by which any offending member can be excluded from the society altogether.

The funds of the society so derived, partly from rents and partly from contributions and fines, are all held by the treasurer as forming one general stock, out of which the expenses incidental to the collection of rents, rates, repairs, and funerals of members, are paid, and allowances are made to sick members; and the annuitants, members of the society, have a claim on the property founded on the 31st and 32nd rules of the said society, of which the following are copies:—

31. "That every member who has belonged to this society, and paid up all and every his contributions, fines, arrears, &c., full 35 years or more, shall be entitled to and receive the sum of four shillings per week as an annuity for life (if the funds will admit), on his attaining the age of 60 years—the aforesaid annuities arising and to be paid out of the *property* of the society. The annuities to commence after the 12th day of *May*, 1852, the annuitants to pay their contributions and fulfil all offices and duties the same as other members; they shall also produce a certificate of their birth for the satisfaction of the society before they shall be entitled to receive such annuity."

32. "Provided always that if the annuities at any time interfere with or reduce the present stock belonging to the society more than £50, then a reduction of the

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annuity shall immediately take place, and continue as long as the exigency of the case may require. Should the annuitant fall sick, his annuity shall be made up to the full amount out of the general stock or fund belonging to the society, and shall come under the same rules and regulations as other sick members. But should he remain on the funds of the society for twelve months, he shall then retire upon his annuity, and be considered a neutral member" (a).

It was proved that the said *Thomas Ainge* was in the month of *January* last, and had been for several years, by virtue of the said rules of the said society, in receipt of an annuity of £10 8*s*. per annum, payable by weekly instalments of 4*s*., and the accounts of the said society for the year in respect of the present registration being produced showed that there were sufficient means from the rents of the freeholds claimed for, to pay such £10 8*s*. by such instalments to the said *Thomas Ainge* for such year, and if the said funds or property of the said society are in future years during the life of the said *Thomas Ainge* sufficient to meet the charge, he will under the rules of the said society be entitled to such money by the month during his life, he paying back 1*s*. 6*d*. per month into the funds of the society as his monthly payment, like other members.

The Revising Barrister was of opinion that the said *Thomas Ainge* had, under the above circumstances, a freehold interest of sufficient value in the hereditaments and premises vested in the trustees of the said society, and allowed the vote accordingly.

(a) The 21st rule speaks of a neutral member as one who is neither "to pay nor to receive."

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If he was right in such opinion, the claimant's name ought to be retained; if he was not right, the claimant's name ought to be rejected.

Other appeals were consolidated.

Macnamara, for the appellant. The question in this case is, whether the respondent had a sufficient interest in land to confer on him a right to vote for the county? The respondent is a member of a benefit society, the funds of which are of a mixed nature, consisting in part of rents derived from real property, in part of the contributions and fines of members. Out of the funds so composed, the expenses of the society and funerals of members are paid, and allowances are made to sick members. Moreover, in certain events (one of which is a refusal to pay fines), an offending member may be excluded from the society.

For the respondent, the 31st rule will be relied on, *viz.*, "That every member who has belonged to this society, and paid up all and every his contributions, fines, arrears, &c., full 35 years or more, *shall be entitled to and receive the sum of 4s. per week as an annuity for life (if the funds will admit)*, on his attaining the age of 60 years—*the aforesaid annuities arising and to be paid out of the property* of the society." The 4s. per week is therefore neither charged on the land, nor is it payable out of the rents. The respondent has merely a share in the ultimate profits of the society after other claims and expenses have been satisfied, but he has no such direct interest in the land itself as will confer a right to vote.

[BOVILL, C.J. Have the respondents any remedy

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if the annuities are not paid, except of a personal nature?]

They have not.

[MONTAGUE SMITH, J. Suppose the land were sold, would a purchaser be bound to see the respondents paid? (*a*)]

He clearly would not.

The decisions with reference to joint-stock companies, only provisionally registered, and therefore not corporations—*Bennett* v. *Blain* (*b*), *Freeman* v. *Gainsford* (*c*)—are in point. The principle of those decisions is, that a shareholder has no direct interest in any specific portion of the property of the company, but only a right to receive a share of the profits. And, previously to those decisions, the same principle had been already recognised in *Myers* v. *Perigal* (*d*), affirmed by the Lord Chancellor (*e*), where it was decided that shares in a joint-stock bank (the assets of which consisted of real estate and money due upon mortgage) were not an interest in land within the meaning of the Statute of Mortmain.

Again, in the present case it is competent for the trustees to apply the rents arising from the land to payment of the expenses and outgoings, and the contributions and fines to payment of the annuities. The case does not resemble that of land bought by a simple

(*a*) In *Sugden's Vend. & Purch.* 13th edition, p. 543, it is said, "When lands are *charged* with the payment of annuities, those lands will be liable in the hands of a purchaser, because it was the very purpose of making the lands a fund for that payment, that it should be a constant and subsisting fund."

(*b*) *Hopw. & Ph.* 35; S. C. 15 *C. B. N. S.* 518.

(*c*) *Hopw. & Ph.* 255; S. C. 18 *C. B. N. S.* 185.

(*d*) 11 *C. B.* 90.

(*e*) 2 *De Gex, M'N., & G.* 599.

partnership, and the legal estate vested in some of the partners. There, even though the profits of the land be blended in a common fund with personalty, it may be that each partner having a beneficial interest in the land itself is in certain cases entitled to a vote. Here, on the other hand, there is no such interest, but only in the profits. Moreover, the Court cannot hold the respondent within the 2 *Will.* 4, c. 45, s. 23, or 6 *Vict.* c. 18, s. 74, "in actual possession, or in the receipt of the rents and profits" of the real estate. He referred also to *Bulmer* v. *Norris* (*a*), and *Steele* v. *Bosworth* (*b*.)

Henseman, for the respondent. The respondent has, under the 31st rule of the society, a sufficient equitable interest in land to entitle him to a vote. Under that rule he is "entitled to" an annuity for life of the requisite amount "arising and to be paid out of the *property* of the society." First, the word "property" in that rule means real property. It is contrasted with the words stock, funds, &c., used in the other rules.

[BOVILL, C.J. The words "stock, or *other* property," occur in the 30th rule (*c*). Does not that go to show

(*a*) *K. & G.* 321; S. C. 9 *C. B. N. S.* 19.

(*b*) *Hopw. & Ph.* 106; S. C. 13 *C. B. N. S.* 22.

(*c*) "Rule 30. That this society shall hereafter at all times have power, whenever they may deem it expedient, to take into their consideration the propriety of laying out such part of the society's stock as they may consider convenient to be spared from the funds thereof, without the probability of its being wanted for the use of sick members, in purchase of stock in the government funds, or otherwise, pursuant to 13 & 14 *Vict.* c. 115, s. 12, the principal produce and proceeds of which *to be preserved for providing an annuity fund*, to be considered when the funds are sufficient for that purpose. The stock or *other property* shall at all times be invested in trustees, especially appointed by the society for that purpose, in number not less than six; and whenever such number of trustees

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that the word "property," in the 31st rule, includes "stock?"

MONTAGUE SMITH, J. The words of the 31st rule, "if the *funds* will admit," must surely mean the *whole* funds.]

In the 32nd rule, "the present stock" is contrasted with "the general stock or fund belonging to the society," and it is only when the annuitant falls sick that his annuity is under that rule to "be made up" out of "the general stock or fund belonging to the society." The "general stock or fund," therefore, cannot be identical with "the property of the society," out of which, under the 31st rule, the annuity is ordinarily to be paid. The best mode of reconciling the rules is to hold that "property" in the 31st rule means real property.

[MONTAGUE SMITH, J. Has the 30th rule of the society (*a*) ever been acted upon?]

The case is silent on that point, but it may be concluded that the funds have never been sufficient for the purpose.

Secondly. Assuming the word "property" cannot be restricted to real property, still where upon a due apportionment the qualifying amount in value is derived from realty, the Court will apportion and uphold the vote. *Mills* v. *Cobb* (*b*). The authorities cited on the other side do not govern the present case. The principle on which they were decided, *viz.*, that the

shall be reduced by death or removal from office to three, the same shall be completed to the original number by the society's nomination of new ones."

(*a*) See *ante*, n. (*c*), p. 199.

(*b*) *Hopw. & Ph.* 357; S. C. *L. R.* 2 *C. P.* 95.

claimants there had no specific interest in the land, but merely a share in the profits of the company when they accrued, does not apply. Here the rule expressly says "that the respondents shall be *entitled* to and receive the sum of 4s. per week as an annuity for life," "*arising and to be paid out of the property of the society.*"

[BOVILL, C.J. You omit the words "if the funds will admit."]

Here the funds do admit, as appears by the case. It is true there is nothing in the rules to prevent the rents being applied to the outgoings and other purposes of the society, and the contributions and fines to the payment of the annuities. But for the purposes of the vote it is submitted that the principle of apportionment ought to be applied. The case of an ordinary partnership affords an analogy in the respondent's favour. *Baxter* v. *Brown* (*a*) is an authority that the rule applicable to shares in a joint-stock company is not applicable to the case of a simple partnership, but that although by the deed of partnership the land is vested in trustees, each partner (provided his share in the real property is sufficient in value) is entitled to a vote.

BOVILL, C.J. In this case it has not been contended that the respondent had a legal interest in the real property belonging to the society, but that he had an equitable interest in respect of it, which entitled him to a vote. Under the 31st rule of the society the respondent was entitled to an annuity for life, if the funds

(*a*) 7 *M. & G.* 198; S. C. *nom. Baxter* v. *Newman*, 1 *Lutw.* 287.

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would admit, "arising and to be paid out of the property of the society." And if the word "property" were there used to denote real property, I think that this claim might be sustained. But if the word "property" be not so used, but means, as I think it clearly does, the whole property belonging to the society, it is extremely difficult to see what direct interest the respondent can have either in the real estate or in the rents of the society. With perfect propriety the trustees might have paid the annuitants out of the contributions and fines of members, and they were in no way bound to make the payment out of the rents of the real estate. Under these circumstances I think the case falls within the authority of *Bennett* v. *Blaine* (*a*), and *Gainsford* v. *Freeman* (*b*), and that there is no such direct and certain interest in the land as will confer a vote. By those authorities, and also by *Bulmer* v. *Norris* (*c*), I feel bound, and I think this case is within the principle which they have established, and not within *Baxter* v. *Brown* (*d*). The decision of the Revising Barrister must therefore be reversed.

BYLES, J. I agree that the authorities conclude this case, and I think that the value of our decisions would be impaired if we were not governed almost superstitiously by authority. Whether apart from authority I should have entirely agreed it is unnecessary to state.

KEATING, J. The respondent must show that he has an equitable interest in land, and I can find nothing in

(*a*) *Hopw. & Ph.* 35; S. C. 15 *C. B. N. S.* 518.

(*b*) *Hopw. & Ph.* 255; S. C. 15 *C. B. N. S.* 185.

(*c*) *K. & G.* 321; S. C. 9 *C. B. N. S.* 19.

(*d*) 7 *M. & G.* 198; S. C. 1 *Lutw.* 287.

this case which would enable him to compel the trustees to appropriate a single shilling necessarily from the land to the payment of his annuity. There may be expediency in making the payment in that way, and it may in fact have been so made. But supposing the contributions and fines abundant to meet all payments, including the annuities, Mr. *Hensman* has been unable to point to anything in the rules which would prevent the payments being so made, and the rents accumulated by the trustees. The authorities conclude the case in any view.

MONTAGUE SMITH, J. I am of the same opinion. The respondent had no equitable estate or interest in the land of this society. If the land had been specifically charged, or if the society had acted on their 30th rule, and had, under that rule, set apart real estate to provide an annuity fund, then indeed the annuitants would have been entitled to a vote. So, again, if in the 31st rule "property" meant real property. But "property" there means the whole funds of the society, and there is no more a specific charge in favour of the annuitants than of the sick members. The 74th section of the 6 *Vict.* c. 18, provides "that the *cestui que trust* in actual possession, or in receipt of the rents and profits," shall have the right to vote. I think that means the receipt of the rents and profits as such, and not a payment out of a general fund, into which other persons may dip their hands for other purposes.

Decision reversed.

Attorneys—For Appellant, *J. Whitehouse.*
For Respondent, *Hensman & Nicholson.*

FRYER, Appellant; BODENHAM, Respondent.

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The mere facts, that occupation was originally conferred from charitable motives, and is still enjoyed with restrictions, will not, if the interest of the occupier amount to freehold, preclude him from the franchise.

In an institution called "*Lord Coningsby's Hospital*," founded A.D. 1614, the claimant occupied a house and garden, to which he was appointed for his life, and from which he could not be disturbed, except for felony. He had let the garden. He and the other inmates were called servitors, but rendered no service, though they were bound to observe certain rules, under penalty of a fine. The gate was locked at 9 p.m., and none, without special leave, could after that hour enter or go out. No one could be absent more than three days without leave; attendance at chapel was required; misconduct was prohibited; clothes and coals were supplied to the servitors from the funds of the hospital.

Held, that the claimant possessed a freehold interest, and was entitled to vote as occupying as "owner" within the meaning of "The Representation of the People Act, 1867" (30 & 31 *Vict.* c. 102), sect. 3.

AT a Court held before the Revising Barrister for the city of *Hereford*, *Frederick Bodenham* duly objected to the name of *John Fryer* being retained on the *St. John Baptist* list of voters for the city of *Hereford*.

It was proved that *John Fryer* occupied one of a series of eleven houses, known as "*Lord Coningsby's Hospital*," originally founded in 1614, and that he had so occupied during the qualifying period, and had been separately rated, and had paid all poor rates in respect of such occupation, but that some of the said rates had been afterwards returned to him by Mr. *Arkwright*, hereinafter named, in consequence of a request made by the occupants of the hospital, but such return was optional, and a mere matter of grace on his part. It was further proved that a notice of objection, good in form, was duly served on the said *John Fryer*, and that the said *John Fryer's* claim was in respect of occupation of one of a series of houses known as "*Lord Coningsby's Hospital*," for and occupied by six soldiers of three years'

service, and five domestic servants, who have lived in service for seven years, and who are badly off in their circumstances. That the said eleven occupiers (of whom the claimant was one) are called servitors, and that one of them is appointed superintendent or corporal by Mr. *Arkwright*, and is called Corporal Coningsby. It was further proved that the persons who occupy these eleven houses are nominated by *John Hungerford Arkwright*, Esq., of *Hampton Court*, who owns the Coningsby estates, out of which fixed payments to the occupants of the houses are made.

It was further proved that rules had been made in the year 1614 (when the hospital was founded) for the government of the occupants of the hospital, but it appeared that these had become partly obsolete, but it was in evidence that Mr. *Arkwright* could do as he liked with regard to the rules, and that he appointed the inmates of the hospital as servitors to their respective houses, and that the funds of the hospital came from Mr. *Arkwright's* estate, and were distributed equally among the servitors.

The evidence given also proved that the servitors paid no rent, and that clothes and coals were supplied to them out of the funds of the said hospital.

The houses are built on two sides of a quadrangle, a portion of the other sides of which is occupied by a chapel and a common hall. This quadrangle is entered by an iron gate, which opens into the street, and the key of which gate is kept by the corporal of the hospital. The gate is locked at nine o'clock in the evening, after which time none of the occupants can enter from, or go out into the street, or beyond the limits of the hospital, without the special license of the corporal. The occu-

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pants of the houses occasionally dine together in the common hall, and they are expected to attend service on certain fixed days in the chapel, and not to be absent more than three days at a time without the leave of the corporal.

When a man is appointed to one of the houses he holds it and a garden near to it for his life, and cannot be disturbed in his occupation by Mr. *Arkwright* or anyone else, except for a murder or a felony, or something of that kind. It was agreed that none of the houses had ever been let by any of the persons appointed to them, but a garden outside the hospital and appertaining thereto, held by the said *John Fryer*, had been let by him because he was too old to cultivate it himself. That there is no service or duty to be performed by the servitors, but they are subject to certain rules of the hospital, which they must obey under penalty of a fine. They are bound by these rules to attend the chapel at regular times, to keep the windows of their houses clean, not to become intoxicated, nor to use profane oaths, and not to be absent from the hospital for more than three days at any one time without the corporal's leave. That the said *John Fryer* did not produce any deed or other document.

The Revising Barrister held that the occupation of the appellant was eleemosynary in its character, and that he did not occupy as owner or tenant within the meaning of "The Representation of the People Act, 1867," and accordingly expunged his name from the register.

If the Court should be of opinion that the said *John Fryer* and the nine other persons objected to did occupy as owners or tenants within the meaning of "The Representation of the People Act, 1867," then their names were

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to be restored to the *St. John Baptist* list of voters, from which the same had been expunged, and the register of voters was to be amended accordingly.

But if the Court should be of opinion that the said *John Fryer* and the other nine persons so objected to did not occupy as owners or tenants within the meaning of the said Act, then the register of voters was to remain unaltered.

Dowdeswell, Q.C., and *George Browne*, for the appellant. The question is, whether the facts as stated bring the appellant under the category dealt with in the case respecting *Lord Burghley's Hospital, Simpson* v. *Wilkinson* (*a*), or under that considered in the case of the *Knights of Windsor, Heartley* v. *Banks* (*b*). This is the case of a borough vote. It can be shown that the appellant really has the qualification of a county voter. Therefore, being in occupation, he comes under one of the classes of occupier, as owner, or tenant, under 2 *Will.* 4, c. 45, s. 27, and "The Representation of the People Act, 1867," (*c*), s. 3. In *Simpson* v. *Wilkinson* (*d*), a freehold building was divided into several rooms, each of the annual value of £4. Each room was separately inhabited by a bedesman. No person admitted as a bedesman had ever been known to be removed during his life, but a power of eviction was reserved in the ordinances by which the hospital was governed, for certain infirmities and vices specified therein, and it was held that the bedesmen were each entitled to a separate equitable estate of free-

(*a*) 1 *Lutw.* 169; 7 *M. & G.* 50.

(*b*) *K. & G.* 219; S. C. 5 *C. B. N. S.* 40.

(*c*) 30 & 31 *Vict.* c. 102.

(*d*) 1 *Lutw.* 168; S. C. 7 *M. & G.* 50.

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hold in their respective rooms. The right of the bedesmen of the same hospital to the franchise was again contested, but confirmed in *Roberts* v. *Percival* (*a*), where *Erle*, C.J., says, "but if a person have an estate, whether legal or equitable, it matters not whether the motive of the donor was of a charitable nature, or whether the feelings of the parties who took the estate and enjoyed the profits under it ought to be the feeling of eleemosynary grantees." It is clear if the appellant had not a freehold, yet he had an occupation in his own right.

[BYLES, J. He must have such an occupation as would entitle him to maintain an action of trespass?]

Yes—it must be a right: something beyond that of a servant.

The word "tenant" may include a tenant at will. It does not necessarily imply a reservation of rent, or a fixed term of occupation. *Locke* v. *Matthews* (*b*).

Macnamara, for the respondent. The appellants do not occupy either as owners or as tenants. First, not as tenants, because no relation of landlord and tenant exists between them and Mr. *Arkwright*. Secondly, not as owners, because the nature of the enjoyment, and the restrictions upon it interfere with, and divest it of, the character of ownership. The occupation is purely of an eleemosynary kind. It is expressly found in the case that "Mr. *Arkwright* could do as he liked with regard to the rules."

(*a*) *Hopw. & Ph.* 121; S. C. 18 *C. B. N. S.* 36.

(*b*) 18 *C. B. N. S.* 753.

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[KEATING, J. There seems to be some limit to his power, because it is also found that "when a man is appointed to one of the houses he holds it . . . . for his life, and cannot be disturbed in his occupation by *Arkwright* or any one else, 'except for murder or felony.'"]

But it seems as if Mr. *Arkwright* might make what rules he pleases, and perhaps such as would disturb the security enjoyed under the existing ones.

[MONTAGUE SMITH, J. But in the *Inns of Court* tenants for life are subject to rules made by the benchers, but that subjection surely would not interfere with their franchise?]

They, however, are not liable to such an interference with their enjoyment as to be locked in at a certain hour at night, as these men are.

[BOVILL, C.J. Suppose a freeholder to give permission to an old servant to reside in a house for his life, but not by deed, so that he would clearly not be tenant for life in the legal sense, surely he would occupy as tenant?

MONTAGUE SMITH, J. Would it make any difference if the owner coupled with the permission a stipulation that he should not smoke, or give him annually £10 and coals? Would he be any the less a tenant?

BYLES, J. You must make these men out to be licensees, and nothing more.]

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It is submitted that the legal estate is in *Arkwright*, and he appoints these men to occupy for life.

[BOVILL, C.J. But the case finds in effect that they are entitled for life. It is nowhere stated that *Arkwright* has any property in the premises.]

In *Heartley* v. *Banks* (*a*), the military knights of *Windsor*, though they had a house specially allotted to each, were, as regards the rules by which they were governed, fully as independent as the claimant here is, yet notwithstanding the decision in *Simpson* v. *Wilkinson* was cited, they were held not to be entitled to the franchise. The ground of the decision was that the character of the body was purely eleemosynary.

In *Heath* v. *Haynes* (*b*), the case of a similar hospital called *Earl Leicester's*, at *Warwick*, the brethren were held not to be entitled to votes for the borough, the Court being of opinion that they did not occupy as owners or tenants.

In *Bridgewater* v. *Durant* (*c*), the case of the lay clerks at *Windsor* appointed by the dean and canons, the fact of appointment to a house, without power to let it, but as it seemed on the facts, for life, was held not to show an occupation as owner or tenant to qualify for the borough franchise.

In *Freeman* v. *Gainsford* (*d*), where the inmates of *Lord Shrewsbury's Hospital* in *Sheffield*, claimed the county franchise, the Court in deciding against them

(*a*) *K. & G.* 219; S. C. 5 *C. B. N. S.* 40.

(*b*) *K. & G.* 99; S. C. 3 *C. B. N. S.* 889.

(*c*) *K. & G.* 377; S. C. 11 *C. B. N. S.* 7.

(*d*) *K. & G.* 448; S. C. 11 *C. B. N. S.* 68.

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laid great stress upon the fact of its being a charitable institution, as a test to ascertain if the members could be said to have such a legal or equitable estate as would confer the right to vote. The eleemosynary character of the claimant's occupation continues from the origin of the charity to the present day. It is plain from the statements in the case the occupation is subordinate to the purpose of the charity. There is no independent occupation.

Dowdeswell, Q.C., in reply, was not called upon.

BOVILL, C.J. I am of opinion that the claimant was the occupier of a house as owner within the meaning of "The Representation of the People Act, 1867," and it seems to me that the present case is undistinguishable in principle from the case of *Roberts* v. *Percival*. There, as here, the cases of *Heartley* v. *Banks* and *Freeman* v. *Gainsford* were strongly relied on, but the distinction between those cases and that of *Simpson* v. *Wilkinson* was pointed out most clearly by *Erle*, C.J. He there says (*a*), "But there is a broad distinction in my mind between the present case and each of those cases; for in them there was a governing body of trustees in whom the legal estate was necessarily to continue vested for the purpose of executing the trust to be performed by them, and the profits of the endowment did not belong absolutely and without any intervening person to those who claimed to be qualified by reason thereof. The trustees were to receive the profits, and then the poor knights of *Windsor* were entitled to claim a portion of

(*a*) *Hop. & Ph.* 129.

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the money out of those profits; and so the inmates of *Lord Shrewsbury's Hospital* were entitled to receive a portion of the money from the trustees without themselves having any estate at all; though in each of those cases the trustees were bound to find lodgings for the inmates. But in *Lord Burleigh's Hospital* the members are when named to be placed in certain rooms, and in those rooms they are to continue till they die." Now apply that to the present case. As to the distinction attempted to be made by Mr. *Macnamara*, the case of *Roberts* v. *Percival*, is clearly applicable. There is here a distinct finding that when a man is once appointed he holds the house for his life, and cannot be disturbed unless he be convicted of murder or felony. That, to my mind, is a clear statement of a freehold interest. As to the power of removal on conviction of murder or felony, there were similar but stronger provisions in *Roberts* v. *Percival*, as appears from the ordinances which are set out in *Simpson* v. *Wilkinson*, which related to the same hospital. There are there ordinances (*a*), that if any of the occupants are afflicted with certain diseases, or convicted of drunkenness, barratry, adultery, or such like faults, or shall, after warning, play at cards, dice, or other unlawful game, they shall be displaced and their allowance stopped. The Revising Barrister in the present case gives as the ground on which he held that the claimants were not entitled to vote, that the occupation was eleemosynary in its character, but it is clear that there are many cases in which persons may occupy as the objects of charity, but still may occupy as owners or tenants, and that point was raised in *Roberts* v. *Percival*,

(*a*) Ord. 11 and 12.

and the Court laid down there that the manner in which the occupation is conferred cannot affect the character of the occupation in respect of the franchise. Therefore I think that the Revising Barrister was wrong, and that his decision should be reversed. I was requested by my brother *Byles*, who was obliged to leave the Court, to say that so far as he had heard the argument, he entertained the same opinion.

KEATING, J. I am of the same opinion. No doubt in the case of *Heartley* v. *Banks*, expressions were used in the judgment which have created the difficulty in the present case, but it is to be remembered that that case is not only distinguishable from this case in its facts, but also that it underwent review in the case of *Roberts* v. *Percival*, and all the points insisted on by Mr. *Macnamara* were urged there, and the Court held that there was nothing to prevent the claimants acquiring an equitable freehold. The decision here of the Revising Barrister is that the occupation was of an eleemosynary character, and probably by that he intended to bring the case within the observations in *Heartley* v. *Banks*. He has, however, not only found that the occupation was of an eleemosynary character, but he has also set out the facts on which he founded his opinion; and though we have held that the Revising Barrister by his finding on a matter of fact may conclude the point, yet if he submits the circumstances on which he founded his opinion, the Court will examine them to see if he be justified in that opinion. The case of *Roberts* v. *Percival* shows that the mere circumstances of the origin of the occupation, where eleemosynary, will not necessarily prevent the parties concerned from acquiring a

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freehold interest, to confer the franchise, and indeed that must have been implied in every one of those cases. Therefore that alone cannot disentitle the claimants to vote. In this case there is a distinct finding that the appointees had the right to occupy for their lives, and that that right could not be divested except by their committing murder or felony or the like, a matter not to be assumed as probable. In addition to that it is not stated in whom the legal estate is vested, and the only persons who deal with the occupation are these servitors, as they are called. There is also one statement of an act of ownership which is important, namely, that though these persons do not generally let their land but occupy it themselves, yet that a garden was let by one of the servitors, and that was an act of ownership by him, and he appears to have done so without interference by anyone. Therefore, I think that the Revising Barrister was mistaken in relying on the fact of the origin of the occupation being more or less eleemosynary, and that his decision must be reversed.

MONTAGUE SMITH, J. I am of the same opinion; and it appears to me that the appellant had a freehold interest in the house assigned to him. It is expressly found by the case that he had it for his life, and could not be disturbed, except in the case of his committing murder or felony, and there is nothing indefinite nor arbitrary in that which could detract from his estate. He has then a freehold; he is also in the occupation of the house, for it is not suggested that anyone else is occuping it. I should have thought that this was a proper decision to have arrived at if there had been no authorities to guide us, but I also think that the case is clearly within those of

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Simpson v. *Wilkinson* and *Roberts* v. *Percival*, and is distinguishable from *Heartley* v. *Banks* on the ground found here by the Revising Barrister. In *Heartley* v. *Banks* it did not appear that the knights had the occupation of specific rooms definitely assigned to them, but only lodgings which might be shifted from time to time, and therefore they had not a freehold interest. That case is also distinguishable from the present case on other grounds. Therefore I am of opinion that our decision should be for the appellant.

Judgment for the appellant.

Attorneys—For Appellant, *Hancock, Saunders, & Hawksford.*
For Respondent, *Westall & Roberts.*

TROTTER, Appellant; WATSON, Respondent.

Jan. 25.

A right by contract to have a lease granted upon the fulfilment of conditions (other than for a mere money payment) cannot, under 30 & 31 *Vict.* c. 102, s. 5, confer a vote, although the claimant is let into possession pending the fulfilment of the conditions.

By an agreement between an owner in fee, the trustees of a building company, and one *C.*, it was agreed that the owner should, on the requirement of *C.*, with the consent in writing of the trustees, grant at a ground rent to certain workmen selected by the trustees, ninety-nine years' leases of building sites, and that till the granting of the leases the land should be *C.'s* security for money advanced by him to build the workmen's houses. By a subsequent agreement between the trustees and one of the workmen (the claimant for a county vote), the trustees agreed that he should have a lease of his house within three months after payment of the purchase-money (to be paid by yearly instalments), provided he observed the conditions in the agreement, and the rules of the company. Pending the fulfilment of the conditions the claimant was let into possession, and had paid the ground rent, and such instalments of the purchase-money as had become due, and hitherto observed the rules, but the mortgagee had not required a lease, or been paid off, nor had the trustees consented in writing:—*Held*, that the claimant was not the lessee or assignee of a term originally created for not less than sixty years within 30 & 31 *Vict.* c. 102, s. 5.

Semble, that an equitable interest in an ascertained legal term is within the section. *Quære*, when there is no legal term.

AT a Court for the revision of the list of voters for knights of the shire, held on the 15th day of *September*, 1868, at *Jarrow*, in and for the northern division of the county of *Durham*, and by adjournment on the 7th day of *October*, 1868, at the city of *Durham*, in and for the said northern division, before one of the barristers appointed to revise the list of voters for the said division, *George Stillman* duly objected to the name of *Robert Anderson* being retained in the list of voters for the township of *Hedworth, Monkton*, and *Jarrow*, in the said northern division of the county of *Durham*.

The name and qualification of the said *Robert Anderson* appeared on the list of claimants published by the overseers of the said township in the subjoined form :—

Anderson, Robert	16, *Clayton St., Jarrow*	Leasehold house	16, *Clayton St., Jarrow*

The following facts were established by the evidence:—

By memorandum of agreement, dated the 1st day of *May*, 1863, and made between Sir *Walter Charles James*, Bart., and Dame *Sarah Caroline*, his wife, of the first part, *John M'Intyre*, *George Sharp*, *Robert Armstrong*, and *William Bell*, of the second part, and *John Clayton* of the third part (and which said memorandum is to be taken as part of this case), after stating that certain parcels of ground, part of the *Jarrow Grange Estate*, over which the said Dame *Sarah Caroline James* had an absolute power of appointment, had been laid out as the sites for one hundred dwelling-houses, and that it was intended that the said one hundred dwelling-houses should be built by means of the monthly contributions of one hundred workmen, who had been selected by the said parties thereto of the second part; and that in the meantime, until such contributions should have been fully paid up, such sum and sums of money, not exceeding in the whole £7,000, as should be required for the completion of the said dwelling-houses over and above the contributions from time to time accruing, should be advanced by the said *John Clayton*, and should be repaid to him with interest after the rate of £5 per cent. per annum, out of such contributions, and that *a lease for* 99 *years* from that day, at the rent of 9*s.* 6*d.* per annum, *should be granted* to each of such workmen of the site of each such dwelling-house, when and so soon as the said *John*

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Clayton, with the consent in writing of the said parties thereto of the second part, should require the same to be granted. It was declared and agreed that in the meantime, and until such leases should be granted, the said parcels of land, and the houses and buildings which should from time to time be erected thereon, should be a security to the said *John Clayton* for so much and such part of the sum and sums of money which should be advanced by him from time to time as aforesaid, as should from time to time remain due and unpaid, with interest thereon at the rate of £5 per cent. per annum, and that such further instruments necessary to give effect to such security, should be executed on the request of the said *John Clayton*. And the said several persons, parties thereto of the second part, agreed to superintend the erection of the said dwelling-houses, and that the same should be completed according to a plan approved by Sir *Walter Charles James*, and Dame *Sarah Caroline*, his wife, and to collect the contributions of the workmen for whom the same were intended to be built, and pay the amount monthly to the said *John Clayton* until the amount of his advances should be repaid with interest after the rate of five per cent. per annum.

Leases of six or seven of the said sites, with dwelling-houses erected thereon, had actually been granted to workmen who had fully paid to the said parties of the second part the sums agreed on between them as the price of such sites and houses respectively, which sums had been handed over by the said parties of the second part to the said *John Clayton*, in part payment of his said loan and interest.

The remainder of the sites had been sold by the said parties of the second part to workmen under agree-

ments in the form and of the tenor and effect of the agreement between the said parties of the second part and the said claimant, *Robert Anderson*, as next hereafter mentioned. But leases of the same have not yet been actually granted. At the date of these agreements respectively, the houses were in some cases not built, and in other cases only partially so. Where not actually built, they were subsequently completed by the respective purchasers, the cost being defrayed out of money, which was part of the £7000 hereinbefore mentioned and agreed to be advanced by the said *John Clayton*, and which said sum has been partly repaid by the contributions aforesaid.

By memorandum of agreement, dated the 18th day of *July*, 1864, and made between the said *John M'Intyre*, *William Bell*, *George Sharp*, and *Robert Armstrong*, therein described as trustees to the *Jarrow Building Company* (and who and their successors are thereinafter referred to as "the said trustees" of the one part, and the said claimant, *Robert Anderson* (thereinafter referred to as "the said purchaser"), of the other part (and which said memorandum is to be taken as part of this case), the said trustees agreed to sell, and the said purchaser agreed to purchase, the leasehold piece of ground, dwelling-house, and premises situated in No. 16, *Clayton Street*, on the *Jarrow Grange Estate* aforesaid, and more particularly described by the plans and specifications already agreed to by the said purchaser, to be held for a term of 99 years, subject to an annual ground rent of 9*s.* 6*d.*, to be paid thereout to the said Sir *Walter Charles James* or his agents, at or for the price or sum of £74. And it was agreed that the said purchase-money of £74 should be paid by fort-

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nightly instalments of 5*s.* 6*d.*, being after the rate of £10 per cent. per annum on the contract price of each house, £5 per cent. per annum to be deducted therefrom for interest on the debt standing against the said purchaser at the commencement of each twelve months, the remainder to be applied to the reduction of the debt standing against the said purchaser at the commencement of each succeeding twelve months. And if the purchaser should neglect or refuse to make any of the said fortnightly payments, when the same respectively should become due, he should forfeit and pay to the said trustees, as and for liquidated damages, the sum of threepence for the first neglect or default, sixpence for the second, one shilling for the third, and so on, the sums increasing in the same ratio for each succeeding neglect or default, until such sums should be equal to the amount the said purchaser had paid to the said trustees as regular subscriptions. And that if at any time such should be the case, the said trustees should have full power to enter on the said ground, house, and premises, and hold the same as if the now reciting agreement had not been made, and forcibly to expel the said purchaser without any ejectment or other legal process, and to plead the now reciting agreement as conclusive evidence of leave and licence. And it was also agreed that the said purchaser should have possession of the said premises from and after the signing of the now reciting agreement, and should pay all ground-rent, taxes, rates, cesses, and outgoings in respect thereof; and that the said purchaser, his heirs and assigns, should keep and maintain the said dwelling-house and premises in good condition and repair, and that until all moneys which might be due or payable to the said trus-

tees or their successors, under the now reciting agreement of the rules of the *Jarrow Building Company* aforesaid, should have been duly satisfied, the said trustees should have full power to insure the said dwelling-house and premises, against loss or damage by fire, in such name and for such sum as they might think necessary, and all moneys which the said trustees should pay in so doing, should be repaid by the said purchaser on demand, and should until and in default of payment thereof, be a charge on the said premises. And that the said purchaser should not sell or transfer his interest in the said house and premises, to any person or persons whomsoever, without the consent or approval of the said trustees, and that *within three months after all the moneys due or payable under the now reciting agreement, and the rules of the Jarrow Building Company aforesaid had been duly satisfied; and provided the said purchaser should have observed and performed all and every the conditions and agreements therein contained, and also all and every the rules and regulations for the time being of the said company, and on his part to be observed and performed, the said trustees*, or their successors, *should*, at the request and costs of the said purchaser, *give him a proper conveyance* in duplicate of the said leasehold premises, subject to the said annual ground-rent and the powers for raising the same.

Upon the execution of this agreement, the claimant was let into possession of the said dwelling-house and premises therein comprised.

Since the making of the contract he has duly paid all instalments according to the contract, and has

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observed all the rules and regulations of the said building company.

All the houses referred to in the firstly recited agreement had been erected on the said land by the said trustees, money having been advanced from time to time for that purpose by the said *John Clayton* to the amount of £7000, which amount, together with the monthly contributions of the said workmen from time to time made, covered the whole cost to the trustees of the erection of the said houses. Since the said houses were built, the agreed ground-rent of 9*s.* 6*d.* has been yearly paid by each individual purchaser to Sir *Walter James*, in respect of each house, out of the monthly payments of the persons for whom the dwelling-houses were built; the interest upon the said sum of £7000, together with part of the principal, had been repaid, so that only the sum of £5000 was on the 31st of *July*, 1867, due to the said *John Clayton*, for principal and interest, on account of his said loan since that date; the amount due to him had at no time exceeded that sum, and on the 31st of *July*, 1868, and at the time of the revision, was less.

The part of the said parcels of ground, mentioned in the said agreement of 1st *May*, 1863, and the houses built thereon, not included in the leases already granted, were on the 31st of *July*, 1867, and have since continued, a sufficient security for the amount due to Mr. *Clayton* for principal and interest.

The aggregate amount of the respective balances of purchase-money and interest due and unpaid from the respective purchasers, to the said trustees, for sites and houses not yet actually leased, has always exceeded the said amount due at any time to Mr. *Clayton*.

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[The case then stated certain facts relevant to the question of value, which the judgment of the Court renders it unnecessary to set out.]

Upon these facts it was contended for the objector:—

1st. That the claimant was not entitled, either as lessee or assignee, to the said house for the unexpired residue of any term originally created for a period of not less than sixty years, so as to entitle him to be placed on the register.

[The second contention related to the question of yearly value (which on the principle for which the objector contended was less than £5).]

On the other hand, it was contended on behalf of the claimants:—

1st. That although no term had actually been created at law, yet there was a valid and binding contract, partly performed between Sir *Walter* and Lady *James*, their mortgagee, Mr. *Clayton*, and the Trustees of the Building Company, for the granting of leases to their nominees of sites and houses thereon for 99 years, from the 1st of *May*, 1863, and that he, the claimant, having contracted with the trustees that he should be named as one of such lessees, and having paid part of the purchase-money and been let into possession of the premises to be demised to him, was entitled in equity to have the lease granted to him on Mr. *Clayton's* debt being paid off, and was, therefore, *cestui que trust* in actual possession, and had a sufficient equitable estate as lessee for an unexpired term of not less than sixty years.

2ndly. That Mr. *Clayton's* mortgage debt must be treated as apportioned upon and borne by the various unleased sites, and the houses thereon, in proportion to the balance of price remaining due and unpaid for the

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same, and that a court of equity would so apportion such debt.

[The third contention related to the question of yearly value (which on the principle for which the claimant contended was not less than £5).]

The Revising Barrister was of opinion that the arguments on behalf of the claimant were sound, and allowed his name to remain on the register.

The questions for the Court were—1st. Whether the claimant had such an estate and interest in the house and premises in his possession as to entitle him to be registered.

[The other questions related to the principle on which the yearly value was to be estimated.]

If the Court should decide the first question in the negative, the name of the claimant was to be erased from the register.

Other appeals were consolidated.

Manisty, Q.C. (*Lovesy* with him), for the appellant. The question arises under sect. 5 of the 30 & 31 *Vict.*, c. 102, *viz.*, whether the claimant is entitled, as lessee or assignee, to the unexpired residue of a term originally created for a period of not less than sixty years.

For the appellant it is contended—1st. That no term, either legal or equitable, has ever been created; but that at most there is only an inchoate right by contract, dependent on contingent events which have not yet happened. 2ndly. That, if there be such a term created as the Act requires, the claimant is neither lessee nor assignee. 3rdly. That the value is insufficient to give the vote. Now, firstly, what is the claimant's interest? The agreement of 1863 is between the owners of the

land, the trustees of the building society, and *Clayton*, the mortgagee. Under that agreement, *Clayton* is to advance £7000 on the security of the land for the building of 100 workmen's cottages; and the owners are, *when Clayton requires, with the consent in writing of the trustees,* to grant leases of 99 years to the workmen, at a ground rent of 9*s.* 6*d.* To that agreement the workmen are no parties. The agreement of 1864 is between the trustees and the claimant (one of the workmen). By that agreement the trustees (who have no interest themselves in the land) profess to sell the claimant a plot of it for a term of 99 years at £74, payable by fortnightly instalments, and agree to give him a lease within three months after payment of all monies due, provided the conditions of the agreement and of the rules of the building society have been observed. Now even assuming (what is not admitted) that under the 5th section an equitable term will confer a vote, when there exists a legal term as its foundation, there is no legal term in existence here. Further, the claimant is not in a position to go into a court of equity and claim a lease. In the year 1867 he would have paid less than £10 towards the purchase-money, and years must elapse before he can pay it off, even if his interest should not, by non-observance of the conditions, be meanwhile forfeited. And further, *Clayton* could not be compelled to require a lease from the freeholders until the whole £7000 is paid off.

As regards authorities, *Brohan's* case (*Carlow*) (*a*) is a decision of an election committee on the Irish Reform Act, 2 & 3 *Will.* 4, c. 88 (the terms of which are

(*a*) *Knapp & Ombler Elec. Cases*, 467.

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similar to the English Act), that an equitable title to a lease is insufficient. And the cases of *Rex* v. *Geddington* (*a*), and *Rex* v. *Llantillio Grossenny* (*b*), decided on the law of settlement, are both in point as showing the distinction between an equitable estate which confers a settlement, and a mere right to have an estate in the event of something being done at a future period, which confers no settlement. In both those cases possession was given, and part of the purchase-money paid; in the latter, the whole after the pauper ceased to be in possession; but no settlement was acquired in either case. *Gainsford* v. *Freeman* (*c*) was also referred to.

[He was stopped by the Court.]

Joshua Williams, Q.C. (*Udall* with him), for the respondent. The respondent has an equitable leasehold estate sufficient, under sect. 5, to confer a vote. He is a mortgagor in possession, his case being the ordinary case of a purchaser, where part of the purchase-money remains on mortgage. The claimant has bought from the trustees an interest or estate in equity, which the agreement of 1863 empowered them to grant to him. The principle relied on by the claimant is, that when a contract of sale is signed the land is in equity the purchaser's, and the vendor has merely a lien for the unpaid purchase-money. That principle is equally applicable to the case of a lease. In *Sugden's* "Vendors and Purchasers" (*d*), the principle is broadly enunciated thus: "Equity looks upon things agreed to be done, as actually performed; consequently, when a contract is made for sale of an estate, equity

(*a*) 2 *B. & C.* 129.
(*b*) 5 *B. & C.* 461.
(*c*) *Hop. & Ph.* 329; S. C., *L. R.* 1 *C. P.* 129.
(*d*) 13th edit., 146.

considers the vendor as a trustee for the purchaser of the estate sold, and the purchaser as a trustee of the purchase-money for the vendor." And in a note there is the following quotation: "A lessee insured his house, the lease expired, and he contracted for a new lease. Then the house was burned, and the office insisted that at the time of burning it was not the plaintiff's" house, but it was held otherwise (*a*).

[BOVILL, C.J. The question there was, whether the plaintiff had an insurable interest—not whether he had an estate.]

In *Payne* v. *Mellor* (*b*), the Lord Chancellor said, "If the party, by the contract, has become in equity the owner of the premises, they are his to all intents and purposes. They are vendible as his, chargeable as his, capable of being encumbered as his; they may be assets; and they would descend to his heir." In *Seton* v. *Slade* (*c*), the Lord Chancellor said, "The effect of a contract for purchase is very different at law and in equity. At law the estate remains the estate of the vendor; and the money that of the vendee. It is not so here. The estate, from the sealing of the contract, is the real property of the vendee. It descends to his heirs. It is devisable by his will; and the question, whose it is, is not to be discussed merely between the vendor and vendee; but may be to be discussed between the representatives of the vendee."

The cases of *Rex* v. *Geddington* (*d*), and *Rex* v. *Llantillio Grossenny* (*e*), are not cited in *Sugden's* "Vendors

(*a*) *Printed Cases, D. P.* 1730.
(*b*) 6 *Ves.* 352.
(*c*) 7 *Ves.* 273.
(*d*) 2 *B. & C.* 129.
(*e*) 5 *B. & C.* 461.

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and Purchasers;" and it is therefore to be inferred that in *Lord St. Leonards'* opinion, they were merely decisions on a special statute. In *Holroyd* v. *Marshall* (*a*), the Lord Chancellor (*Lord Westbury*), laid down, as an elementary principle of courts of equity, that "In equity it is not necessary for the alienation of property, that there should be a formal deed of conveyance. A contract for valuable consideration, by which it is agreed to make a present transfer of property, passes at once the beneficial interest, provided the contract is one of which a court of equity will decree specific performance. In the language of Lord *Hardwick*, the vendor becomes a trustee for the vendee; subject, of course, to the contract being one to be specifically performed."

It has been said, on the other side, that the trustees of the building company had no interest in the land, but it is submitted that they were donees of a power to grant leases. They have express power to take possession and build the houses; and they select the workmen. In *Dart's* Vendors and Purchasers (*b*), it is said: "The agreement equally binds the estate, although the vendor be a trustee, or a mere donee of a power of sale, instead of absolute owner." Moreover, the landlord is estopped by the receipt of rent, from denying the claimant's right to a lease.

[BOVILL, C.J. Do you contend that a court of equity would give the claimant the immediate possession?]

The claimant is in possession already; not as a trespasser, but under circumstances in which a court of

(*a*) 10 *H. L. Cas.* 209. (*b*) 3rd edit., 161.

equity would restrain an ejectment. It is true that at law he has no estate; but surely, being neither a trespasser, nor liable to be ejected, he must have *some* estate in equity. And if so, what is it?

[BOVILL, C.J. He must have a term of 60 years.]

It is submitted that he has. Test it thus. What, in point of duration, is the estate in the enjoyment of which a court of equity would protect him? What could he sell? It is true he has no right to call for a lease until the purchase-money is fully paid. But in every purchase that is the case, where part of the purchase-money remains on mortgage, or is otherwise unpaid. Till the purchase-money is paid, the purchaser has no right to have the legal estate conveyed. But could it be contended that he has therefore no estate? Whether the purchase-money is payable in a lump sum, or by instalments, makes no difference. The claimant is mortgagor in possession; and it makes no matter that there are other persons similarly situated.

[MONTAGUE SMITH, J. Of what estate is the claimant the mortgagor?]

The estate which he has purchased. That the contract is to sell a term, and not the fee can create no distinction.

[BOVILL, C.J. Mr. *Manisty* says there is no subject-matter of sale—no term of sixty years—in existence; and further, that there is no present right to have it.]

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The delay as to the legal estate is simply to secure the mortgage money. If on its being paid the claimant is entitled to have a lease granted, in equity he has the term already.

[MONTAGUE SMITH, J. The condition is not simply for payment; it is also for the observance of the rules of the building company.]

The object which the rules have in view is to secure the money payment, and the Court will not presume that they have a different operation.

[BOVILL, C.J. Suppose the agreement were to grant a lease when there is a house built on the land worth £200?]

That is a different case. There the granting of the lease is contingent on an event, which is not the payment of money. An ordinary mortgage may have just as stringent conditions for enforcing payment as are found here, and the mortgagor is as liable to be ejected. Every lease contains conditions, the non-performance of which may defeat it, yet till non-performance and forfeiture it is valid, and gives a qualification.

[BOVILL, C.J. Before this claimant can call for a lease, he must have performed the conditions of *both* agreements. *Clayton* must ask for a lease, and the trustees sanction it. *Clayton's* interest is merely that of a mortgagee. He has a right to have the legal estate protected for him. But the claimant might

redeem *Clayton*, and could then compel the granting of a lease.

BYLES, J. Could *Clayton* be compelled to concur until the whole £7000 was paid ?]

It may be, he could not. But in equity the charge is apportionable; and it has been so held in this Court for the purpose of the vote. *Moore* v. *The Overseers of Carisbrooke* (*a*). The claimant has an equity of redemption. That is an estate, and would be assets if the claimant died. If he devised it, what would his executors sell? A term of 99 years. He also cited *Nunn* v. *Fabian* (*b*) and *Redding* v. *Jarman* (*c*).

BOVILL, C.J. The question in this case is whether the claimant is entitled to vote under sect. 5 of the 30 & 31 *Vict.* c. 102, as lessee of the unexpired residue of a term originally created for not less than sixty years. No question arises as to the period of occupation, nor, in the view we take of the case, as to the yearly value. There is a distinction observed in the language of the section, which, after first speaking of persons "seised at law or in equity" of lands of freehold, copyhold, or other tenure, proceeds to speak of persons entitled as lessees for the unexpired residue of a term, omitting the words "seised at law or in equity" in defining the leasehold franchise. But giving to the section a liberal construction, and assuming an equitable term (in other respects sufficient) to be included by it, does the present case fall within its meaning? Mr. *Williams* has con-

(*a*) 2 *Lutw.* 233; S. C. 12 *C. B.* 661.

(*b*) *L. R.* 1 *Ch. Ap.* 35.

(*c*) 16 *L. T. N. S.* 449; S. C. 2 *Weekly Notes*, 165.

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tended that it does, and that the claimant had an equitable interest, which he calls an equitable estate; and he has cited several authorities in support of the general proposition, that, where there is an agreement for a sale or lease, equity considers an estate or interest to pass by the agreement. I think the present case is not within that general proposition, or the authorities that have been cited to support it.

In the first place, it is to be observed that Sir *Walter* and Lady *James* (from whom the rights of all other persons must *necessarily* be derived) have entered into no agreement with the claimant, but what they have done is to bind themselves to *Clayton* and the trustees of the building company to do certain acts. By the agreement of 1863, *Clayton* is to advance a sum not exceeding £7000 (Sir *Walter* and Lady *James* charging the property to that extent), and the money is to be laid out in dwelling-houses; and of these dwelling-houses, Sir *Walter* and Lady *James* agree to grant leases "so soon as the said *John Clayton*, with the consent in writing" of the trustees, "should require the same." Then the agreement of 1864 is between the trustees and the claimant. In substance (though it purports to be a sale) it is an agreement for the creation of a term of 99 years. But before the claimant can have any right to call for a lease, he must have paid all monies due and payable under the agreement of 1864 and the rules of the building company, and three months must have elapsed from the time of payment, and the conditions and stipulations of *both* agreements must have been performed. At the present time the purchase-money is not paid, and of course the three months have not elapsed since payment; and even if it

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had, *Clayton* has not asked for a lease, nor have the trustees given their consent in writing. It is not contended that there is a legal term in existence, but it is said there is an equitable one. I think it impossible to contend that the claimant is now in a condition to ask a court of equity for a lease when there are several conditions to be performed before he can be entitled to one. It is true he is in lawful possession, but he is not in possession for a term of sixty years. He is in possession until it is ascertained whether he is to have the lease, and this depends on whether he performs the required conditions. I think the cases cited by Mr. *Manisty* are in point, and that the claimant has no estate at all in equity, but merely an inchoate right to have a lease at a future time, and on the fulfilment of certain conditions. It has been pressed upon us that, as in the case of vendor and purchaser, where there has been part payment and the purchaser let into possession, he is deemed in equity to have the estate, it must be the same here for the purposes of this Act. But even as regards such cases, the Master of the Rolls, in *Wall* v. *Bright* (*a*), remarks that a mere trustee, who never had any beneficial ownership, does not for all purposes "resemble one who has agreed to sell an estate that up to the time of the contract was his. There is this difference at the outset, that the one never had more than the legal estate, while the other was at one time both the legal and the beneficial owner, and may again become the beneficial owner if anything should happen to prevent the execution of the contract; and in the interim between the contract and conveyance, it is possible that

(*a*) 1 *Jac. & W.* 501.

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much may happen to prevent it. Before it is known whether the agreement will be performed, he is not even in the situation of a constructive trustee—he is only a trustee *sub modo*, and provided nothing happens to prevent it. It may turn out that the title is not good, or the purchaser may be unable to pay; he may become bankrupt; then, the contract is not performed, and the vendor again becomes the absolute owner." Although the general doctrine may be as it has been stated, it falls far short of establishing that an equitable estate, as distinguished from an equitable right, is here created. I prefer to follow the decisions in the Queen's Bench (*a*) on the law of settlement, which lay down a correct rule. No term has been created either at law or in equity; and although the time may come when there will be an equitable estate, that is not so while the claimant's interest is encumbered with the conditions and stipulations of *both* the agreements. The decision of the Revising Barrister must be reversed.

BYLES, J. I am of the same opinion; and though I have listened attentively to Mr. *Williams'* argument, entertain no doubt. The statute speaks of the unexpired residue of a term "originally created for a period of not less than sixty years." There must, therefore, have been a created term, which there never was here, legal or equitable. Again, the claimant must at least have the power to call for it. Here he has not, unless *Clayton* will concur, and *Clayton* may refuse to concur until the whole £7000 is paid.

(*a*) *Rex* v. *Geddington*, 2 *B.* & *C.* 129; and *Rex* v. *Llantillio Grossenny*, 5 *B.* & *C.* 461.

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KEATING, J. I am of the same opinion. The Reform Act of 1832 having first created the leasehold franchise, the Act of 1867 has extended it to leaseholds of smaller value—in terms that would admit of an argument whether an equitable interest in a term of years is within the section. But it has been already decided by an Irish Judge (*a*), that an equitable interest in an ascertained legal term would satisfy the Irish Reform Act (*b*); and after that decision I am of opinion that an equitable interest in an ascertained legal term would also, under this Act, confer the franchise. Whether a merely equitable interest under an agreement would confer the qualification, I entertain doubt; but even assuming that it would, I agree with the other members of the Court, that a party who has a mere right by contract to have a lease granted to him at a future period, but is not in a position to call for it now, because certain acts (which include the payment of the purchase-money, and other matters besides) remain to be done, is not entitled to a vote under this section. I may add that I think the Revising Barrister might well take the view he did; but we differ from it, and the decision must be reversed.

MONTAGUE SMITH, J. I am of the same opinion. To establish the vote under sect. 5, it is necessary that there should be a term created, of which the claimant is lessee or assignee. It is contended that it is sufficient if there be an equitable term, of which he is lessee or assignee. If the claimant be entitled at all, it must be as lessee. But I think it cannot be predicated of the claimant that

(*a*) *Crampton, J., Vance's case, Alc. Reg. Cas.* 269.

(*b*) 2 & 3 *Will.* 4, c. 88.

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he is the lessee of a term. No one will dispute the elementary rules of equity to which Lord *Westbury* refers in *Holroyd* v. *Marshall* (*a*), and it may be that where there is an agreement to grant a lease on the payment of money *simpliciter*, that may be deemed an equitable term and within the Act of Parliament. But that I apprehend is only so where there is a simple debt and lien for the money. When the right to the lease is dependent on future conditions, which may or may not be performed; that may be an equitable interest, but it is not a term—at all events, not such a term as was contemplated by this Act of Parliament. Here the lease cannot be obtained until the conditions of *both* agreements are performed; and *Clayton* is not bound to call for a lease until he is paid the whole of the £7000, and the other workmen have performed their agreements. Suppose an agreement were entered into to grant A.B. a lease, if he paid certain rent and performed certain covenants, provided C. D. took a lease of the adjoining land and paid certain rent and performed certain covenants. Such an agreement might result in a lease, but it would be impossible to say that a term was created by the agreement, although A. B. performed everything to be done on his part. The present case, though more complicated, comes to a similar result.

Decision reversed.

Attorneys—For Appellant, *James Crowdy*, agent for *W. D. Trotter, Bishop Auckland.*
For Respondent, *Harle & Co.*, agents for *John Watson, Durham.*

(*a*) 10 *H. L. Cas.* 209.

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

EASTER TERM, 1869,

IN THE

THIRTY-SECOND YEAR OF QUEEN VICTORIA.

TRENFIELD, Appellant; LOWE, Respondent.

April 23.

The bailiff and bailiff-burgesses of *C.* have held immemorially a meadow divided into eighty-one allotments called "acres," allotting each acre to an inhabitant by the delivery on the land of a twig and turf, accompanied by a form of words, investing him with the land for life, so long as he should reside in the town, chargeable with waste, and subject to their rules, present and future, respecting the meadow.

By custom they grant yearly to eighty-two of such of the inhabitants as they think fit the right each to put a cow on the meadow for five weeks from the 10th of *September*, and afterwards throw the meadow open for two months to the sheep and cattle of all the inhabitants. Times are specified, at which the holder of an "acre" may manure his land. He is separately rated, and pays the rates for his "acre;" and the annual value is between £3 and £5. The claimant, since his investiture in 1847, had been in the enjoyment and possession of his "acre:"—*Held*, that he had an equitable freehold for life, and was "in the actual and *bonâ fide* occupation" within 2 *Will.* 4, c. 45, s. 18, so as to entitle him to a county vote.

THE case stated, that at a Court holden by one of the Barristers appointed to revise the lists at *Chipping Sodbury*, on the 19th *September*, 1868, for the revision of the list of voters for the county of *Gloucester*, *John Lowe* duly objected to the name of *John Trenfield*

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being retained in the list of voters for the western division of the said county.

The following facts were established by the evidence: The bailiff and bailiff-burgesses of the town or borough of *Chipping Sodbury* is a body of very ancient origin, and existed, as appears by the records of the town and court rolls of the manor of *Chipping Sodbury*, long previously to the year 1681, but no charter of incorporation is at present known to have existed. The said bailiff and bailiff-burgesses are appointed as hereinafter mentioned.

In the year 1681 a charter was granted by *Charles* 2. A translation of this charter is given in Sir *Robert Atkyns's* "History of Gloucestershire," and is referred to as a part of this case.

Shortly after the granting of this charter, the inhabitants became anxious for its repeal, and according to a statement in *Rudder's* "History of Gloucestershire," published in 1779, which is also referred to as a part of this case, the charter was annulled by proclamation, at the request of the inhabitants themselves, in 1689. Whether the charter of *Charles* 2 was formally annulled or not, it fell into complete disuse, and from the year 1688, or 1689, down to the present time, the borough or town has been under the government of the bailiff and bailiff-burgesses as prior to the last-mentioned charter.

The vacancies of bailiff and bailiff-burgesses are filled up from time to time at the annual court of the lord of the manor, the bailiff being appointed by the lord of the manor, or his steward, out of three persons presented to serve the office for the ensuing year by the jury of the court leet, and the bailiff-burgesses being elected in case of vacancies by the same jury. The bailiff and bailiff-

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burgesses, upon their respective elections, take the customary oaths of office, which are administered to them in court by the steward. The bailiff's oath is as follows :—

"You shall swear that you will well and truly serve our sovereign lady the Queen, and the lord of this leet, in the office of bailiff of and for this borough and manor, until you be thereof lawfully discharged according to due course of law. You shall well and truly do and execute all things belonging to your office according to the best of your knowledge. So help you God."

The oath of a bailiff-burgess is as follows, *viz.* :—

"You shall swear to observe the lord of the manor in the place of a burgess, shall be assistant to the bailiff and the rest of the burgesses there, for the well-ordering of the borough and all things belonging, and shall be subject to the wages and customs there. So help you God."

The bailiff and bailiff-burgesses, amongst other property, are entitled to a piece of inclosed pasture land, situate in the adjoining parish of *Old Sodbury*, called "The Mead Riding," and containing, by admeasurement, ninety acres. The origin of the title of the bailiff and bailiff-burgesses to this piece of land is not shown, but they have held it for centuries; and in *Rudder's* "History of Gloucestershire," this and other property are referred to as derived from ancient grants made in the reign of *King John* and *King Henry* 2. The piece of land called the *Mead Riding* is divided by metes and bounds and trenches into eighty-one allotments, none less than an acre in extent, and many of them from an acre to an acre and a half, but all are called "acres." The bailiff and bailiff-burgesses have, from time imme-

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morial, given these acres to the inhabitants in the following manner: On an acre falling vacant, a meeting of the bailiff and bailiff-burgesses is convened, and held at the usual place of meeting, in the town-hall of *Chipping Sodbury*, and such meeting decides by majority of votes to whom, being an inhabitant of the town or borough of *Chipping Sodbury*, such vacant acre shall be given; after such decision has been made, one or more of the bailiff-burgesses, and the inhabitant to whom the acre has been given, enter upon the acre in question, and a sod or turf is then cut from the acre by the hayward of the riding, (an officer appointed in court leet of the manor,) and a twig stuck in it, and thereupon one of the bailiff-burgesses acting on behalf of the bailiff and bailiff-burgesses, gives possession of the acre by delivering the twig and turf to the donee, at the same time reading the following formula, which is called the investiture:

"The piece of land on which we are now standing (commonly called an acre) has lately fallen into the possession of the bailiff and bailiff-burgesses of *Chipping Sodbury*, and in pursuance of their direction I invest you therewith, by delivering to you this twig and turf: To hold the said piece of land for your life, and the life of any woman that may be your lawful wife, and survive you, so long as you and your wife shall reside in this town, and subject and chargeable with all manner of waste, particularly waste in felling or cutting any tree or trees whatsoever growing, or that may hereafter grow on the said piece of land. And also subject to all the present rules and orders of the said bailiff and bailiff-burgesses, respecting the grounds called 'The Ridings,' as well as those that may be from time to time relating thereto."

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This completes the ceremony, and a minute is usually recorded in the minute-book of the bailiff and bailiff-burgesses, to the effect that the acre which fell in on the death of *A.* was given to *B.*

The acre thus obtained is held by the donee, according to the terms of the investiture, and is drained, manured, and mown by the holder, and who, at spring and fall pays to the bailiff in respect thereof for what are called dues, the sum of 2*s.*, which goes to the bailiff, in aid of his expenses of office, which are considerable.

With regard to the *Mead Riding* aforesaid, the following custom has prevailed from time immemorial. After the crop of grass has been mown and taken off by the several parties, who, for the time being, are the owners of acres, as aforesaid, the bailiff and bailiff-burgesses convene a meeting of themselves, and grant out the after-grass in what are called stems, to such of the inhabitants of *Chipping Sodbury* as they think fit, to the number of eighty-two, this being the number of acres of which the riding is considered to consist. Each such stem confers the right to depasture a cow on the riding for five weeks from the 10th *September*. At the expiration of such five weeks the riding is thrown open by the bailiff and bailiff-burgesses, according to custom, to all the inhabitants of *Chipping Sodbury*, to depasture sheep and cattle therein until the 15th of *December*, when it is closed, but manure may be taken out on the acres, after the grass is cut and carried, until the 1st of *August*, and also from the 5th of *January* to the 14th of *February* in each year.

Each holder of an acre is separately rated to and pays the poor and church rates of *Old Sodbury*, and is also separately assessed to the income-tax for that parish in

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respect of such acre, and no instance has been known of a person once elected as the holder of an acre being dispossessed, or ceasing to hold such acre, except upon his death, or his ceasing to reside in the town of *Chipping Sodbury*. In no case is the clear annual value of an acre in the said *Mead Riding* less than £3, but in no case does it amount to £5.

The said *John Trenfield* being an inhabitant of the said town of *Chipping Sodbury*, was, in the year 1847, duly elected by the said bailiff and bailiff-burgesses to an acre in the said *Mead Riding*, and was thereupon duly invested with the possession of the same acre, according to the form of investiture, in manner aforesaid. The said *John Trenfield* has ever since been, and now is, such an inhabitant as aforesaid, and in the enjoyment and possession of such acre. The clear annual value of the acre of the said *John Trenfield* is more than £3, but less than £5.

The said *John Trenfield* duly claimed to have his name placed and retained on the list of voters for the parish of *Old Sodbury*, in the western division of the county of *Gloucester*, in respect of the acre so held by him as aforesaid, but his vote was objected to on the ground that his interest in the land, in respect of which he claimed to vote, was not such an estate of freehold as would confer a county vote.

The Revising Barrister decided that the said *John Trenfield* had not under the circumstances stated such an estate of freehold in the land in question as would confer a vote for the county, and disallowed the claim of the said *John Trenfield*, and struck his name out of the said list of voters.

If the Court be of opinion that this decision was

wrong, the register is to be amended by inserting therein the name of the said *John Trenfield*.

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Pickering, Q.C. (*J. G. Edwards* with him), for the appellant. The claimant took an equitable freehold; for it is of course clear the parol investiture would not pass the legal estate. The title, therefore, would seem to be this:—The legal estate in the piece of land called "*The Mead Riding*," is vested in the bailiff and bailiff-burgesses—as to that on the evidence of long usage, the Court will presume a lost charter—and the bailiff and bailiff-burgesses must be taken to hold the land in trust in the way it has been enjoyed, *i.e.*, as to each particular allotment called an "acre" for the particular inhabitant whom they have elected and invested with possession. The claimant has been so elected and invested with the possession of an "acre," in respect of which he claims the vote. *Simpson* v. *Wilkinson* (*a*), and *Roberts* v. *Percival* (*b*), may be referred to on the question of presumptions as cases where the Court held the Revising Barrister warranted in the presumption that *Burleigh Hospital*, of which the origin was unknown, had been founded by *Lord Burleigh* under license from the Crown, and endowed with a grant of land to feoffees for the use of its members. In the latter case, *Erle*, C.J., in delivering judgment, said, that "Where the deed is lost, the terms of it would be presumed from the way in which the property had been enjoyed." Looking then at the way in which the property has been enjoyed here, what is the claimant's interest? He has an estate for an indefinite period, *viz.*, so long as he resides at *Chip-*

(*a*) 1 *Lutw.* 168; S. C. 7 *M. & G.* 50.

(*b*) *Hopw. & Ph.* 121; S. C. 18 *C. B. N. S.* 45.

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ping Sodbury. That on the authorities is clearly a life estate, being determinable only on his ceasing to reside in the town (*a*). *Davis* v. *Waddington* (*b*) (where the authorities are collected in a note to the report in *Manning* v. *Grainger*. *Preston* on Estates (*c*)). If indeed it were determinable on the will of the grantor, that might make a difference—*Beeson* v. *Burton* (*d*)—but it is determinable on the will of the grantee, and it would make no difference, even if it were determinable on the will of a stranger. Again, it is not the less a life estate, because it is held subject to the rules of the bailiff and bailiff-burgesses respecting "The Ridings," as appears by the case of the bedesmen—*Simpson* v. *Wilkinson* (*e*), and *Roberts* v. *Percival* (*f*)—who held subject to the rules of the hospital. Here the rules do not interfere with the right to occupy the land, while in the case of the bedesmen they did to this extent that for certain causes there was a power of removal; but the Court considered it a sufficient answer that it had never been exercised. [He referred also to the case of the owner of Benchers' Chambers in *Lincoln's Inn* (*g*), and *Roberts* v. *Drewitt* (*h*).]

[*Joshua Williams*, Q.C., intimated that he should contend that the claimant had not such an exclusive occupation as would render him within sect. 18 of the 3 *Will.* 4, c. 45, in "the actual and *bonâ fide* occupation" of the land.]

(*a*) *Co. Litt.* 42 a.
(*b*) 1 *Lutw.* 129; S. C. 7 *M. & G.* 46.
(*c*) P. 405.
(*d*) 2 *Lutw.* 225; S. C. 12 *C. B.* 647.
(*e*) 1 *Lutw.* 168; S. C. 7 *M. & G.* 50.
(*f*) *Hopw. & Ph.* 121; S. C. 18 *C. B. N. S.* 45.
(*g*) 2 *Peckwell* 109.
(*h*) *Hopw. & Ph.* 132; S. C. 18 *C. B. N. S.* 48.

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The claimant had "the actual and *bonâ fide* occupation" within sect. 18. Being invested with the possession of the land, and in actual occupation, can he be ousted by a grant to other parties of the aftermath? Would a farmer be ousted from his occupation by giving a right to labourers to depasture some of his land with their cows? By a grant of the *vestura terræ* or the *herbagium* the soil does not pass (*a*). Moreover, the eighty-two grantees have not each an exclusive right of pasturage over a specific acre, but each can depasture the whole eighty-two acres, of which "The Mead Riding" is composed. Such persons could not be rated; while the claimant (who is in fact rated) is the only person legally liable.

Joshua Williams, Q.C., for the respondent. The qualification relied on is a freehold estate of less than £5 yearly value, and to render that a good qualification the claimant must be within sect. 13 of the 2 *Will.* 4, c. 45, "in the actual and *bonâ fide* occupation" of the land. It is submitted that the claimant has no estate (legal or equitable) in lands or tenements, of which he is in the actual occupation. He has, in fact, no estate at all in land, but merely a franchise. In "*Rogers* on Elections" (*b*), it is said, "The 'occupation' required in this case is peculiar, from the introduction of the word 'actual,' which does not occur in the section in the 2 *Will.* 4, c. 45, conferring the occupation franchise in boroughs. . . . . The question, what is 'actual occupation,' has been supposed to be illustrated by the decisions under one of the Pauper Settlement Acts (*c*), where the

(*a*) *Co. Litt.* 4 b.
(*b*) 4th edit., 7.
(*c*) 1 *Will.* 4, c. 18.

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same words are used; and in which it was held that no constructive occupation by a tenant or lodger—nothing, in short, but the person's own and exclusive occupation of the whole premises satisfied the provisions of the Act." And the following authorities are there cited: *St. Nicholas, Rochester* (*a*); *St. Nicholas, Colchester* (*b*); *Rex* v. *Berkswell* (*c*); and *Rex* v. *St. Giles in the Fields* (*d*), is distinguished. *Simpson* v. *Wilkinson* (*e*), and *Roberts* v. *Percival* (*f*), are distinguishable on the above ground, since the bedesmen had each the actual and exclusive occupation of a particular room. In *Nash* v. *Coombs* (*g*), *Wood*, V.C., designated a right analogous to the present in the resident freemen of *Bedford*, as a "temporary and fluctuating interest." The claimant has, in fact, merely a right to mow. If, during one period of the year, he is in occupation by his scythe, during another period the other grantees are in occupation by the mouths of their cattle. How, if their occupation were for forty weeks instead of for five? *The King* v. *The Trustees for the Burgesses of Tewkesbury* (*h*), shows that persons having merely the right to the aftermath may be the occupiers of the land. There the aftermath was vested in trustees by Act of Parliament, and they were held to be rateable. On the other hand, a mere right to mow the land does not make a person the occupier. *Suckerman* v. *Warner* (*i*). It is not denied that the claimant may have an equitable freehold in a mode of enjoying the land, but not in the land itself. He has a mere franchise, while

(*a*) 5 *B. & Ad.* 219.
(*b*) 2 *A. & E.* 599.
(*c*) 6 *A. & E.* 282.
(*d*) 4 *A. & E.* 495.
(*e*) 1 *Lutw.* 168; S. C. 7 *M. & G.* 50.
(*f*) *Hopw. & Ph.* 121; S. C. 18 *C. B. N. S.* 45.
(*g*) *L. R.* 6 *Eq.* 51.
(*h*) 13 *East*, 155.
(*i*) 2 *Bulstr.* 248.

resident, to enter according to the terms of the investiture and mow.

[MONTAGUE SMITH, J. Could not the claimant enter at any time, and pitch a tent, or otherwise disport himself on the land?]

He cannot stack his hay on the land, nor can he manure it, except at specified times; neither can he feed it off with cattle.

[MONTAGUE SMITH, J. Can he not do anything on the land not inconsistent with the right of pasturage?]

It is submitted not.

[MONTAGUE SMITH, J. The form of investiture is that the piece of land has lately *fallen into possession*. Previously, therefore, it was out of possession; and then the claimant is invested with possession.]

He is invested with possession "according to the form of investiture in manner aforesaid." And by the form of investiture his right is subject to the rules of the bailiff and bailiff-burgesses; and not merely to the present rules, but to the rules that "may from time to time be made relating thereto." The bailiff and bailiff-burgesses might make a rule affecting his mode of enjoyment; as, for instance, that the land should no longer be mown. The claimant is not a person who *is to be seen* on the land; and to give the vote in this case would be to encourage *faggot* votes.

Pickering, Q.C., replied.

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KEATING, J. In this case, the question has been but faintly argued, whether the claimant took an estate of freehold for life. Mr. *Williams* did not lay much stress on that point; and, looking at the formalities detailed in the case, I entertain no doubt that the intention was that the claimant should take possession of the land for life, subject to the rules of the bailiff and bailiff-burgesses, some of which involved the rights of other persons to enter and depasture the land at certain seasons, and take the aftermath. The formula of investiture states, that the piece of land "has lately fallen into possession of the bailiff and bailiff-burgesses of *Chipping Sodbury*," and "in pursuance of their direction," one of the bailiff-burgesses (who reads the formula) invests the inhabitant "therewith," subject to the rules. Indeed, so far as possession is concerned, the case distinctly finds that the claimant has been "in the enjoyment and possession of such acre" from the time of investiture. I think it clear, therefore, that the claimant took an equitable freehold. But a point has been raised whether, within the 18th section of the 2 & 3 *Will.* 4, c. 45, the claimant could be considered in "the *actual* and *bonâ fide* occupation of the land." It has been forcibly contended that he could not, upon the ground that he was not in exclusive occupation, because of the rights that other persons had on the land. I have entertained some doubt whether the occupation was of the nature which the Act contemplated, but on consideration I think we may reasonably and properly hold that it was. It is found as a fact that the claimant was rated to the poor rates as the occupier, and upon the facts stated there was no one else who could have been. Looking at the whole facts, I come to the conclusion that the claimant was, within

sect. 18, in the occupation of the land. Whether the Revising Barrister intended to raise this point I still doubt; but the case having been argued on the assumption that he did, I have thought it right to express my opinion upon the point.

MONTAGUE SMITH, J. I am of the same opinion. I think Mr. *Pickering* put the claimant's title on the right ground, *viz.*, that the legal estate is in the bailiff and bailiff-burgesses, and that they have invested the claimant with an equitable freehold for life, of which he is in the enjoyment and possession. I share my brother *Keating's* doubt whether any further question was intended to be raised. For the objection to the vote was, that the claimant's interest in the land "was not such an estate of freehold as would confer the vote," and the decision of the Revising Barrister, that the claimant had "such an estate of freehold." Mr. *Williams* has scarcely argued that the claimant had not such an equitable estate of freehold as would confer a vote, provided the restriction in section 18 of the Reform Act, *viz.*, that the claimant "shall be in the actual and *bonâ fide* occupation," has been complied with; but he contends that it has not. I think, however, on the facts stated that it has. The mode of investiture shows clearly that it was the intention to put the person invested in actual possession, and the case expressly states that the claimant was so put in possession. For a part of the year he was in the actual and beneficial occupation; and, although, during another part of the year other persons had a right of pasture, that was no more than a stinted right of common over the whole meadow. The exercise of that right would not prevent one who

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(like the claimant) had been put in possession of a particular acre from continuing to have the possession and general occupation of his land. I see nothing to prevent the claimant from going on the land during the period of the year, when the right of pasture is exercised, and doing any act upon the land that is not inconsistent with such right. The form of the investiture is not unimportant. It treats the person invested as the possessor of the land "chargeable with all manner of waste," and "particularly waste in felling or cutting" trees. Therefore, although I think this point was not intended to be raised, I think that, if raised, it should be decided in favour of the claimant.

Decision reversed.

Attorneys—For Appellant, *Baxter, Rose, Norton, & Co.*

For Respondent, *Hayes, Twisden, & Parker*, agents for *W. Gaisford Berkeley.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

TRINITY TERM, 1869,

IN THE

THIRTY-SECOND YEAR OF QUEEN VICTORIA.

BAKEWELL and Others, Appellants; PETERS, Respondent.

BARNES and Others, Appellants; PETERS, Respondent.

PEROWNE and Others, Appellants; PETERS, Respondent.

BAKEWELL and Others *v.* PETERS.

June 5.

Occupiers of rooms in colleges or halls of the University of *Cambridge*, whether fellows, scholars, or undergraduates, are not "lodgers" within the 30 & 31 *Vict.* c. 102, s. 4. Moreover, sect. 78 of 2 *Will.* 4, c. 45 is, by sects. 56 and 59

THE case stated that the appellants were respectively inserted in the list of claimants claiming to have

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of 30 & 31 *Vict.* c. 102, incorporated therein, so that nothing therein "shall entitle any person to vote in the election of members to serve in Parliament for the city of *Oxford* or town of *Cambridge*, in respect of the occupation of any chambers or premises in any of the colleges or halls of the Universities of *Oxford* or *Cambridge*."

The occupier of rooms in the nature of chambers or flats, so severed in all respects as to constitute a "house" within *Cook* v. *Humber* (*K. & G.* 413), and *Henrette* v. *Booth* (*Hopw. & Ph.* 23), cannot claim as a "lodger," although from peculiar circumstances he cannot be rated so as to perfect his qualification as "occupier of a house." Fellows of colleges, scholars, and undergraduates, occupied chambers in colleges of the University of *Cambridge* so severed as to constitute "houses." By "The Cambridge Award Act, 1856," they could not be rated. Each paid more than £10 a year for the premises unfurnished. Each resided the required period. Leave of the authorities was required to reside during the Long Vacation. They claimed as "lodgers" to vote for members for the town of *Cambridge*.

Held, first, that sect. 78 of 2 *Will.* 4, c. 45 was incorporated with 30 & 31 *Vict.* c. 102, so that the claimants occupying college premises were not qualified for the borough franchise. Secondly, that they were in no sense "lodgers."

their names inserted in the lists of persons entitled to vote in respect of lodgings in the election of two members for the borough of *Cambridge*.

It was objected that the said appellants had no right to be placed on the register on the ground, first, that they were members of the University of *Cambridge*, and were occupiers of chambers in college, and were, therefore, prohibited by section 78 of the Reform Act (*a*) and by sections 56 & 59 of "The Representation of the People Act, 1867" (*b*) from voting; and, secondly, that they were not lodgers within the meaning of the 4th section of the Act last referred to.

The following facts were proved before the Revising Barrister:—

Each appellant was a member of the University of *Cambridge*, and of some college therein, and was a person *in statu pupillari*. He was of full age, and the particulars of his claim were correct.

He occupied the rooms in respect of which his claim was made separately, and as sole tenant for the twelve months immediately preceding the 31st *July*, 1868, and resided therein during the same twelve months, subject to the other circumstances mentioned in the case.

Each appellant paid a rent for his rooms unfurnished of £10 or upwards a year, payable in three equal parts

(*a*) 2 *Will.* 4, c. 45. (*b*) 30 & 31 *Vict.* c. 102.

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at the end of the three University terms, and such rent was paid by each appellant to the corporation or persons mentioned in the 5th column of his claim.

Each set of rooms forming such lodgings had a door into a common staircase, and each appellant had a key of the said door of his rooms. The said rooms formed part of the college buildings, which were approached from the street by an outer gate, and the Master and Fellows, or the Master and Senior Fellows (as the case might be), had the regulating power as to the hour of closing the outer gate.

Each appellant was subject to the general discipline of his college, and spent part of the twelve months immediately preceding the 31st day of *July* last, in college and part elsewhere at his option, but the permission of the college authorities was required before he resided in college during the Long Vacation.

Such permission was not refused to any of the appellants when asked for, nor was permission refused to any appellant to leave his college, and none of them were asked at any time to leave or give up his rooms.

The academical year commenced on the 1st day of *October*, and ended some time in *June*, and contains three terms. There was no regulation of the University or of any college, prohibiting a member of the University from residing in college at any particular period of the year.

The Revising Barrister disallowed the claims on both objections, and expunged the names of the appellants from the lists.

The question for the opinion of the Court was whether the claims of the respective appellants were rightly disallowed by reason of either of the above objections.

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If the Court should be of that opinion, the said lists were to stand without amendment, and if the Court should be of a contrary opinion, the names of the said appellants were to be inserted in the Register of Voters for the borough of *Cambridge* in respect of lodgers.

BARNES and Others *v.* PETERS.

THE only difference in the statement of facts between this and the preceding case appears in the following paragraphs.

Each of the said appellants was a scholar of his college and a person *in statu pupillari*.

The scholars of a college are entitled to reside in rooms therein, paying a rent for them unfurnished.

Such rent is a sum of £10 a year or upwards, payable in three equal parts, at the end of the three University terms, and was paid by each appellant to the corporation or persons mentioned in the 5th column of his claim, and each appellant was a member of that corporation, and received a fixed annual sum out of its general funds, of which such rent formed part.

PEROWNE and Others *v.* PETERS.

THE following facts were proved before the Revising Barrister:—Each of the appellants was a Fellow of

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his college. He was of full age, and the particulars stated in his claim were correct, and he occupied the rooms in respect of which his claim was made separately as sole tenant for the twelve months immediately preceding the 31st day of *July*, 1868, and resided therein during the same twelve months, subject to the other circumstances mentioned in this case.

The fellows of a college are entitled in order of seniority to select rooms in the college, and to reside therein, paying a rent for the same unfurnished. Such rent exceeds £10 a year, and is payable in three equal parts at the end of the three University terms, and was paid by each appellant to the corporation or persons mentioned in the 5th column of his claim, and each appellant was a member of the said corporation, and received a dividend out of the general funds of the said corporation, of which such rent formed part. There was no agreement in writing relating to such rooms.

Each set of rooms forming such lodgings had a door into a common staircase, and each appellant had a key of the said door of his rooms. The said rooms formed part of the college buildings, which are approached from the street by an outer gate, and the Master and Fellows or Master and Senior Fellows (as the case might be) had the regulating power as to the hour of closing the outer gate.

Each appellant had the right of ingress and egress at all hours, and he could only be removed from his Fellowship by resignation, or in consequence of his contravening the statutes of the college.

The same objections were raised in each of the above cases. The Revising Barrister in each case disallowed

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the claims on both objections, and in each case raised the same question for the opinion of the Court.

Mellish, Q.C. (*H. W. Lord* with him), for the appellants. The claimants, in order to succeed, must no doubt make out two propositions:—

First, that the 2 *Will.* 4, c. 45, is not incorporated into the 30 & 31 *Vict.* c. 102, by virtue of ss. 56 & 59 of the latter Act, so as to prevent the lodger franchise being exerciseable by members of the University.

Secondly, that the claimants are lodgers.

As to the first point, the 2 *Will.* 4, c. 45, s. 78, provides, "that nothing in this Act shall extend to or in anywise affect the election of members to serve in Parliament for the Universities of *Oxford* or *Cambridge*, or shall entitle any person to vote in the election of members to serve in Parliament for the city of *Oxford* or town of *Cambridge in respect of the occupation of any chambers* or premises in any of the colleges or halls of the Universities of *Oxford* or *Cambridge*."

The first branch of that section, which relates to the elections for the Universities, is re-enacted by the second section of the 30 & 31 *Vict.* c. 102; but the second branch of the section, which relates to the elections for the city of *Oxford* and town of *Cambridge*, is nowhere re-enacted. That circumstance of itself raises an inference that it was not intended to incorporate sect. 78 of the 2 *Will.* 4, c. 45, into the later Act. Further, sect. 78 would not apply to lodgers, since the lodger franchise was not in existence in 1832, but only the occupation franchise; and sect 78 expressly refers to the occupation franchise as the subject matter with which it deals, declaring that the vote shall not be acquired "in

respect of the *occupation* of any chambers or premises, &c.," by reason of anything in that Act. And the same argument applies to the 35th sect. of the 19 & 20 Vict. c. 17, (The Cambridge Award Act, 1856,) which enacts that "No member of the University shall, *by reason of any rate* on the property occupied by the University, or by such college, be entitled to be registered as an elector of the borough, &c.," language which could not possibly apply to the lodger franchise, which could under no circumstances be acquired by being *rated*.

[BRETT, J. Suppose the 2 & 3 *Will.* 4, c. 45, were subsequent in date to the granting of the lodger franchise, would not the terms of it be wide enough to embrace it? The words of sect. 4 of the 30 & 31 Vict. c. 102, are "as a lodger has *occupied*;" would not the vote be within sect. 78 of the Reform Act, "in respect of the *occupation*, &c.," as a lodger?]

The answer to that argument is, that the incorporation of an Act of Parliament with one passed at a later date cannot give to the terms of the former Act a more extensive meaning than they had when the Act passed—especially when the effect of the incorporation is, to curtail rights which it is the whole scope of the later Act to enlarge. Such a construction would give to sect. 78 of the Act of 1832 a meaning which it neither had, nor could have, before 1867. On general principles of construction, it is submitted that restrictions in a former Act are not to be engrafted upon a later Act by the mere fact of the two being in general terms incorporated together. As regards the Acts now in question, the Legislature, even when dealing with the old franchises, and

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only lowering value, is careful in every case expressly to re-enact restrictive clauses. Can it be supposed, therefore, to have been really the intention of the Legislature to embody such clauses without express re-enactment, where the effect is to restrict the operation of newly-created franchises? Sect. 5 may be taken as an example of a restrictive clause expressly re-enacted. It provides that no one shall be registered unless he has complied with sect. 26 of the 2 *Will.* 4, c. 45. Why? But that sect. 26 would not otherwise apply, being restrictive. Sect. 59 of 30 & 31 *Vict.* c. 102, affords another illustration of the same rule. The second branch of that section, by express enactment, renders sections 24 & 25 of the 2 *Will.* 4, c. 45, applicable to the new franchises. With regard to the 30 & 31 *Vict.* c. 102, sect. 56, which applies "all laws, customs, and enactments, &c.," "relating to the representation of the people in *England* and *Wales*, and the registration of persons entitled to vote," to "any person hereby authorised to vote," and to the new constituencies and franchises, it is submitted that the main object of that legislation was to apply to the new constituencies and franchises such matters as the machinery of the Registration Acts, and of appeal from the Revising Barrister's Court. The respondent's proposition must be that a clause which meant at the time "no person shall vote in respect of the £10 occupation franchise" must now embrace a franchise wholly different, *viz.*, the lodger franchise.

Secondly, the appellants are within the 30 & 31 *Vict.* c. 102, s. 4 (*a*), lodgers.

(*a*) Section 4 enacts: "Every man shall, in and after the year 1868, be entitled to be registered as a voter, and when registered, to vote for a member or members to serve in Parliament for a bo-

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It is not denied that each appellant occupies part of a house so structurally separate as to constitute a "house" within the principle of *Cook* v. *Humber* (*a*), and *Henrette* v. *Booth* (*b*). But the 30 & 31 Vict. c. 102, s. 61, defines a "dwelling-house" to mean "any part of a house" occupied as a separate dwelling, and separately rated to the relief of the poor. Therefore, if not separately rated, the appellants' rooms are not "dwelling-houses" within that definition. The appellants' rooms are not separately rated or separately rateable. By the 19 & 20 *Vict.* c. 17 (The Cambridge Award Act, 1856), ss. 22 & 24, the college, if a corporation, and if not, its head, is to be assessed to the rates, and not the appellants; and the college property is to be deemed in the occupation of the college. The appellants' argument therefore is this, that their rooms not constituting dwelling-houses within the above parliamentary definition, they are lodgers within the meaning of the 30 & 31 *Vict.* c. 102, s. 4. The contrary hypothesis would involve the anomaly that a class of persons who could not vote as occupiers because not separately rateable, are yet deprived of the franchise, although occupying apartments of upwards of £10 yearly value.

rough, who is qualified as follows (that is to say):

"1. Is of full age, and not subject to any legal incapacity; and

"2. As a lodger has occupied in the same borough separately and as sole tenant for the twelve months preceding the last day of *July* in any year the same lodgings, such lodgings being part of one and the same dwelling-house, and of a clear yearly value, if let unfurnished, of ten pounds or upwards; and

"3. Has resided in such lodgings during the twelve months immediately preceding the last day of *July*, and has claimed to be registered as a voter at the next ensuing registration of voters."

(*a*) *K. & G.* 413; S. C. 11 *C. B. N. S.* 33.

(*b*) *Hopw. & Ph.* 23; S. C. 15 *C. B. N. S.* 500.

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[BRETT, J. The words of sect. 61 are, "shall include:" that seems to make something a dwelling-house which was not so before.]

The necessity is imposed on the Court for the first time of deciding what within the meaning of this Act of Parliament a "lodger" is. It is submitted that one who occupies separate apartments, for which by the operation of the law he is not separately rated, is a lodger within its meaning.

[BRETT, J. Your contention is, that the appellant must occupy either as a servant, or an occupier, or a lodger; that he does not occupy as a servant or an occupier separately rateable, and therefore that he is a lodger.]

That in effect is so.

It is not denied that there are dicta of judges, when the decision did not turn on the question of what a "lodger" was, contrasting a lodger with the occupier of a separate tenement, and unfavourable to the appellants' contention. But on the other hand, in the case of *Stamper* v. *The Overseers of Sunderland-near-the-Sea* (*a*), decided since the 30 & 31 *Vict.* c. 102, passed, there are also dicta of all the judges indicative of an opinion that under that Act at all events the term lodger has a wider signification, that a person may be a lodger although his landlord does not reside on the premises, and that persons who for rating purposes are the occupiers of separate tenements may nevertheless be lodgers within

(*a*) *L. R.* 3 *C. P.* 388.

the Act. Unless indeed one who occupies a dwelling-house, or part of a dwelling-house, under circumstances where he is not by law rateable be a lodger, there is this absurdity involved, that the occupation may be too good to give the franchise.

[MONTAGUE SMITH, J. Under the *general* law the appellants would be rateable.]

That is so, no doubt.

The 30 & 31 *Vict.* c. 102, s. 4, speaks of lodgings as "part of a dwelling-house." It is submitted that the whole college is the domus or dwelling-house, and the corporation the landlord. The college is "wholly let out in apartments or lodgings" (*a*), and the corporation exercises the control of a landlord, having among other matters the regulating power over the outer gates.

The *Solicitor-General* (*W. Cockerell* with him), for the respondent. First, the 78th section of the 2 *Will.* 4, c. 45, is clearly incorporated by the 30 & 31 *Vict.* c. 102, so as to be applicable to the lodger franchise. It has been said on the other side that the first branch of sect. 78 is re-enacted, and the other branch of it is not. That is not so. The first branch of the section is re-enacted by sect. 2, and the second by sect. 56 of the 30 & 31 *Vict.* c. 102. The subject-matter of the two branches of the section being different, the separation of them in the later Act is the more symmetrical arrangement. By sect. 56 of 30 & 31 *Vict.* c. 102, "all laws, customs, and enactments now in force, ... relating to

(*a*) See 30 & 31 *Vict.* c. 102, s. 7.

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the representation of the people, &c." (which sect. 78 of the Reform Act clearly does) are to apply to the new constituencies. And altered constituencies are new ones. No doubt the words are "to any constituency hereby authorised to return a member or members to Parliament as if it had heretofore returned such members to Parliament." But at all events no doubt can exist as to the further words, "and to the franchises hereby conferred," which necessarily include the lodger franchise. Then sect. 59 embodies sect. 78 of the Reform Act, just as if it had been an earlier section in one and the same Act, there being no inconsistency of language which can operate to prevent it. Sect. 35 of the 19 & 20 *Vict.* c. 17, is similarly embodied. The 30 & 31 *Vict.* c. 102, contains no indication of any intention to repeal sect. 78 of the Reform Act, and, unless some clear expression of that intention can be pointed out, the Court will not feel justified in repealing so politic an enactment. As to the argument that restrictive sections are not incorporated without express re-enactment, it is incorrect. Registration in the sense in which the word has been used may be deemed a restriction of the franchise, but its formalities are embodied in general terms. It is a fallacy, however, to call the sections which have been relied on to illustrate the supposed rule restrictive. For instance, the provision in sect. 26 of the Reform Act as to the necessity of six months' possession is in effect not a restriction, but an element in the acquisition of the franchise.

Secondly, the appellants are not lodgers, but occupiers. Indeed, that they occupy "houses" within the principle laid down in *Cook* v. *Humber* (a) and *Henrette* v.

(a) *K. & G.* 413; S. C. 11 *C. B. N. S.* 33.

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Booth (*a*), has been admitted on the other side. But separate houses are not lodgings, and, if not, those who live in them cannot be lodgers. That, at least, is clear from the 30 & 31 *Vict.* c. 102, s. 4, which, though it does not define a lodger, speaks of him as one who lives in a lodging, "being part of one and the same dwelling-house." As to the argument that Trinity College is the dwelling-house, no one not a lawyer could suppose that it was serious.

Mellish, Q.C., replied.

BOVILL, C.J. The Legislature having abstained from a definition, it devolves on this Court to decide on the meaning of certain general and ambiguous terms, and we must take for our guide the language throughout of the Act of Parliament. Upon the second point in the case, which I will take first, as to whether the appellants occupied lodgings as lodgers, I have come to the conclusion that they were not lodgers: they did not occupy as lodgers, and the rooms in question were not lodgings within the meaning of this Act of Parliament. According to the decisions of this Court, especially in the cases of *Cook* v. *Humber*, and *Henrette* v. *Booth*, each set of rooms occupied by the appellants respectively, was a "house," as being separated from other parts of the same house, and occupied as a separate dwelling. A similar view was expressed by my brother *Byles* and myself in the case of *Stamper* v. *Sunderland* (*b*), regard being had to the facts in that case, and the nature of the occupation, and indeed Mr. *Mellish* admitted that he could

(*a*) *Hopw. & Ph.* 23; S. C. 15 *C. B. N. S.* 500.

(*b*) *L. R.* 3 *C. P.* 388.

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not contend that these rooms were not separate houses within the rule laid down in the decisions to which I have referred. That being so, the occupiers, if the rooms were of the requisite value, would have been entitled to vote for the city of *Oxford* and the town of *Cambridge*, but for the 78th section of "The Reform Act of 1832," as occupiers of dwelling-houses. Then how can such rooms cease to be separate dwelling-houses, or become lodgings simply by the fact of their being rateable or not rateable? If we were to hold that the nature of the house or the character of the occupation is to be determined by whether the buildings are rateable or not, this consequence might follow, that there might be two houses adjoining one another, the one in a district where the occupiers of such rooms were liable to be rated, and the other where by some local act the rate was imposed upon the landlord or upon some other body; in the one case it would be necessary to hold that the rooms were "houses," and in the other that they were "lodgings," the two being precisely the same, both structurally and in the mode and character of the occupation. That is one strong reason why we ought not to hold rooms, which are, according to the decisions, "houses," to be "lodgings" for the purposes of the Act of Parliament. Then does "The Representation of the People Act, 1867," convert what, according to law, were separate houses into lodgings? What is there in the Act to show that any difference was intended to be created in the character of the dwelling or the nature of the occupation? How can these be affected by the question whether the occupier be rateable or some other person? It is quite true, as urged by Mr. *Mellish*, that the fact of the occupier of what is in law a separate "house" not being liable to be

rated may and does prevent him from being entitled to the franchise. But it seems to me no sufficient reason for giving him the franchise by our decision, that because he cannot have it as a householder, he ought to have it as a lodger. There is nothing in the Act of Parliament at all to warrant our placing such a construction upon it. In fact to adopt such a course would be to treat a man who is really a householder as a lodger, and the effect would be to allow one who is really a householder to vote without being rated, whereas the Act of Parliament expressly says, that a householder shall not vote unless he is rated. And as this Act of Parliament was passed after the decisions in *Cook* v. *Humber*, and *Henrette* v. *Booth*, it may be supposed that it was penned with knowledge of the law as laid down in those decisions. Yet there is nothing to show that it was intended that the law should be altered. The interpretation clause was referred to for the purpose of showing that some inference was to be drawn from that; but it seems to me none can be drawn in favour of the view which was presented to us. For every word of that clause would be satisfied by the case contemplated by the 7th section, *viz.*, that where there is a part of a dwelling-house occupied as a separate dwelling, (which according to the 7th section is in certain instances to be rated upon the owner so that there would be no separate rate upon the occupier,) the interpretation clause simply declares that the term dwelling-house shall apply only when the party is separately rated, as since the abolition of the compound rating by the 7th section, he may be under certain circumstances. I am of opinion on this point that the Revising Barrister was right.

Upon the other ground also, my opinion is in favour

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of the respondents. It may be difficult to say what was the precise object of the Legislature in enacting the 78th sect. of 2 *Will.* 4, c. 45, but one is very plain and apparent on the face of the Act. It was intended that the representatives of the city of *Oxford* and the town of *Cambridge* should be elected by those who were connected with the town, and who were not merely members of or resident in the colleges and halls of the University. That is an intelligible ground; the persons who have residence in the University have more interest in the University than in the town, and the Universities having representatives of their own, it was reasonable that the representation of the towns should not be interfered with by those who temporarily reside in the University, whether as scholars, as fellows, or as undergraduates. The effect of the 78th sect. in reality, is to define the limits of the city of *Oxford* and the town of *Cambridge* for the purposes of the representation, and to exclude from them the area of the colleges and the halls of the Universities, so far as those are concerned who occupy rooms within them. If that were the object, what reason can there be why that enactment should not be incorporated in "The Representation of the People Act, 1867?" I find none. In my judgment, every reason points to our holding, if we can do so consistently with the enactment of the later Act, that that provision was so incorporated. But I think it is not necessary to do more than ascertain whether there is such inconsistency between the Acts as to prevent our so holding, because, by the 56th sect., it is enacted, "That subject to the provisions of the Act, all . . . . . enactments now in force . . . . . relating to the representation of the people . . . . . shall remain in full

force, and shall also apply, as nearly as circumstances admit, to any person hereby authorised to vote." Then if any reasonable doubt could exist upon the construction of that section, it is entirely removed by section 59, which declares that "this Act, so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force relating to the representation of the people." Construing the two Acts as one, I find no inconsistency in holding that the 75th sect. is incorporated with, and applicable to, the new franchise, as created by the later Act. Mr. *Mellish* has referred to section 2 and other sections. They show that in some instances provisions are re-enacted. From the course of proceeding necessarily adopted in the Houses of Parliament, it does frequently occur that however skilfully and well a bill may originally be drawn, amendments are introduced, and difficulties may arise upon some clause or words introduced into the Act; but at most, it only raises an inference which might be urged on the supposition that nothing else was intended, but when there is an express enactment, that the two Acts should be read as one, and all the enactments should be in force and apply, as nearly as circumstances will admit, to any person who shall be authorised to vote, I am not disposed to give much weight to an inference, slight as it seems to me, so derived. I think there is no substantial distinction between the three cases of the scholars, the fellows, and the undergraduates, and that the decision must be affirmed.

BYLES, J. Upon the last ground taken by my lord, I entertain no doubt whatever. Section 78 of 2 *Will.* 4,

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c. 45, provides "that nothing in this Act contained . . . shall entitle any person to vote in the election of members to serve in Parliament for the city of *Oxford* or the town of *Cambridge*," in respect of a particular qualification. Now, first of all, section 56 of the "Representation of the People Act, 1867," preserves "all laws, customs, and enactments now in force . . . . . relating to the representation of the people." The word "customs" seems to me to be important, because it shows that section 56 may relate not only to the general right to vote, but to such rights to vote as may exist in particular places. But the section which makes all clear to my mind is section 59. That is a very powerful, and I had almost said a tyrannical section, because, in dealing with the statute of 2 *Will.* 4, the original Reform Act, it says, "the expressions 'the provisions hereinafter contained,' and 'as aforesaid,' shall be deemed to refer to the provisions of this Act conferring rights to vote, as well as to the provisions of the said Act." Now what can be stronger than saying, as this part of the section does, that the words "as aforesaid" shall refer to that which is enacted many years afterwards? But if we look to the words of this statute, and then refer to the 78th section, the effect is this: "Provided always, and be it enacted, that nothing in this Act contained, or in the Act for the representation of the people, passed many years afterwards, shall entitle any person of the class described to vote in the election of members to serve in Parliament for the city of *Oxford* or the town of *Cambridge*." Upon the application of the 56th and 59th sections of the recent Act to the original Reform Act, I therefore entertain no doubt at all. With respect to the other question, I have, upon a former occasion, in

private, and with great labour, endeavoured to define the word "lodger," and I shall entirely abstain from any such attempt for the future, certainly in public. All I can say is this, that I think, as I have said before, that it must mean "lodger" in the ordinary sense of the word; and if you look at popular language, nobody can say that the gentlemen who claim the franchise upon the present occasion are lodgers. No doubt the word "lodger" is sometimes used in a figurative and poetical sense; I would not apply it in that sense to these gentlemen, who fancy they are lodgers within the meaning of the Act of Parliament, but I dare say they know the lines—

> "Such as take lodgings in a head
> That's to be let unfurnished." (a)

MONTAGUE SMITH, J. I am of the same opinion. I think that the provision made with regard to the Universities, by section 78 of the Reform Act, is incorporated in all its entirety into "The Representation of the People Act, 1867." That provision relates not only to the prohibition of persons residing in their chambers in colleges from voting for the city or town, but also to the election of members to serve in Parliament for the Universities. Both matters are contained in the same section, and, it seems to me, are connected. It is, by section 78, enacted, "that nothing in this Act contained shall extend to or in anywise affect the election of members to serve in Parliament for the Universities of *Oxford* and *Cambridge*, or shall entitle any person to vote in the election of members to serve in Parliament

(a) *Hudib.* pt. 1, canto 1, line 161.

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for the city of *Oxford* or the town of *Cambridge*, in respect of the occupation of any chambers or premises in the colleges or halls of the Universities of *Oxford* or *Cambridge*." The intention was to keep the constituency of the Universities as it was, and at the same time to show that those who lived in the colleges and halls of the University were not to vote for members for the town. Now I see no indication in "The Representation of the People Act, 1867," of any intention to change that legislation in regard to the Universities. Sound policy dictated the clause in question when the occupation franchise was created, and I cannot conceive any reason why the Legislature should disable the members of the Universities living in colleges and living in the college rooms, from voting as occupiers, but should enable them to vote as lodgers. Of course, if it had been expressly enacted, the Court must have given effect to it. However, so far from any change being indicated, it seems to me that the omission of any reference to the 78th section, by way of repeal, is strong to show that the Legislature had not the intention of interfering with the provision expressed in the clause for the Universities. Further, I think that the language of the 56th section, and also of the 59th, is large enough to comprehend and incorporate the 78th section of the Reform Act. [He read section 56.]

Now, it is sought to bring the claimants within the Representation of the People Act, and to give them a right to vote, by contending that they are lodgers. But sect. 56 declares that the former enactments relating to the representation of the people shall apply to the franchises hereby conferred. Those words are large enough to incorporate the 78th clause of 2 *Will.* 4, c. 45.

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Then by sect. 59, the two Acts are to be read together, so far as is consistent with the tenor of the later Act. And it seems to me that it is consistent with the tenor of the later Act that that clause should be read together with it. Upon these grounds I think it is perfectly clear that even if these claimants could have come within any definition of lodgers within the recent Act of Parliament, they are prevented from being put upon the register as lodgers by reason of the incorporation of sect. 78 of the Reform Act. But further, I am also of opinion that they are not lodgers within the meaning of the Representation of the People Act. It is admitted by Mr. *Mellish* that these rooms would, as regards structure, as regards occupation, and all the other incidents attending them, have formed parts of houses in the nature of chambers or flats, so as to come within the definition of a "house" given in *Cook* v. *Humber*, and in *Henrette* v. *Booth*. If so the claimants are occupiers of "houses," and not lodgers in any sense. There is a difficulty in defining who may be lodgers under certain circumstances, but it seems clear that where persons are occupying parts of houses, so as to be plainly entitled to vote as occupiers, if the other conditions of the Act have been complied with, they cannot be treated as lodgers. Until the case is brought before the Court it is not necessary to decide who are lodgers; but I am quite clear that you cannot change the nature of the occupation where a man occupies really a part of a house amounting to a separate "house," so as to make it an occupation as a lodger in order to obtain the franchise, when the conditions of the occupation franchise as to a house are not complied with. There may be cases where a house is wholly let in lodgings, where the occupiers may be treated as

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lodgers—whether they can be so treated may be a question hereafter,—but the distinction between persons living in a house as lodgers, although the house may be wholly let, and persons living in rooms where there is a severance in the structure, so as to be clearly persons occupying a part of a house, like chambers in an Inn of Court, was admitted by me in the judgment in the case of *Stamper* v. *The Overseers of Sunderland.* What I said there is entirely consistent with the decision at which I have now arrived, that these gentlemen are clearly occupying these rooms as occupiers of a part of a house, such as I have described, and therefore cannot be treated as lodgers. On both grounds therefore I agree with the rest of the Court in thinking that the respondents are entitled to our judgment.

BRETT, J. In order to support the appellants' case, Mr. *Mellish* was bound to sustain both propositions for which he contended, namely, that these appellants were lodgers, and that section 78 was not applicable to them. Assuming the appellants to be lodgers, it seems to me that they are not entitled to vote because the occupation as lodgers upon which they rely is an occupation within the colleges of *Cambridge.* If section 78 of 2 *Will.* 4, c. 45, is made applicable to the franchise, and is incorporated with the later statute, then it seems to me to decide the matter. That section says, that no person shall be entitled to vote in the election of members to serve in Parliament for the town of *Cambridge,* in respect of the occupation of any chambers or premises in any of the colleges or halls of *Cambridge.* Now that that section is incorporated with the later statute and is made applicable to this franchise seems to me to be

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clear both from section 56 and section 59. It is clearly within the terms of section 56, because it is an enactment relating to the Representation of the People in England, and it is to be applied, as nearly as circumstances admit, to any person authorised to vote by the later statute, and to any franchise thereby conferred; and the lodger franchise is one of these franchises. Then by section 59, if you are to read the former statute (the 2 *Will.* 4, c. 45) as part of the later statute, it seems to me to follow that the enactment, by altering the words from "nothing in the Act" to "to nothing in the Acts," is made applicable to this franchise. I cannot help also somewhat relying upon one strange result, which would follow from Mr. *Mellish's* argument; if these claimants are lodgers, and section 78 is not applicable, then the Master of Trinity College, who is the occupier of a separate house of far higher value than £10 annually, and cannot possibly be called a lodger, could not vote, and yet all the undergraduates of Trinity College could do so. Further it seems to me that these appellants are not lodgers. The question upon this point, is whether they are lodgers or occupiers within the Act of Parliament. I think it is clear that lodgers and occupiers are to be kept distinct; no man can within the meaning of these statutes be both occupier and lodger. It may be true, that the word "lodger" has not yet been defined, but then the word "occupier" has been to this extent, that where a part of a house is so constructed as to be capable of separate occupation, and is separately occupied, then the person who so occupies, is to be treated as an occupier of a house within the statute. Mr. *Mellish* does not deny that within that definition these appellants are occupiers, and if occupiers within that definition be something

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distinct from lodgers, it follows that the appellants are not lodgers. Therefore, it does not seem to me necessary upon this occasion to define the meaning of the word "lodger." I cannot help thinking that the Solicitor-General was so far right in saying, that no man can be regarded as a lodger who does not occupy lodgings; and it was hardly denied by Mr. *Mellish* that these rooms were not lodgings. But the point relied upon most was that they were not rateable. Now it seems to me that the question whether a person is an occupier or lodger within the statute is antecedent to and independent of the question whether he is rateable or not. I think, therefore, that the Revising Barrister was right on both points, and that our judgment must be for the respondent.

Decision affirmed with costs.

Attorneys — For Appellants, *Meyrick, Gedge, & Loaden.*

For Respondent, *Matthews & Bartlett.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

MICHAELMAS TERM, 1869,

AND

HILARY AND EASTER TERMS, 1870,

IN THE

THIRTY-THIRD YEAR OF QUEEN VICTORIA.

BREWER, Appellant; McGOWEN, Respondent.

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The proviso to sect. 3 of "The Representation of the People Act, 1867" (30 & 31 *Vict.* c. 102), is to be read as if the words "joint occupier" were followed by "as owner or tenant."

AT a Court held at *Bradford*, in the West Riding of the county of *York*, for the revision of the list of voters for the borough of *Bradford*, *Joseph Brewer* claimed to have his name inserted in the list of voters for the township of *Horton*, in the borough of *Bradford*, as entitled to vote in the election of members for the borough of *Bradford*, in respect of his occupation of a

Therefore, "an occupier as tenant" under sect. 3, is not, by letting, during part of the year, a furnished bed-room, and the joint use with himself of a sitting-room, to one whom he also supplied with board, for a sum weekly, reduced to the status of "joint occupier" within the proviso.

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dwelling-house in the township of *Horton*, within the said borough.

It was established by the evidence given before the Revising Barrister, that the appellant was of full age, and it did not appear that he was subject to any legal incapacity:

That the appellant was, on the last day of *July*, 1869, and during the whole of the preceding twelve calendar months had been, an inhabitant occupier as tenant of a dwelling-house within the township of *Horton*, in the said borough of *Bradford*, which dwelling-house was not of the clear yearly value of £10:

That the appellant was, during the time of such occupation, rated as an ordinary occupier in respect of the premises so occupied by him to all rates made to the relief of the poor in respect of such premises, and had paid all rates up to the 5th of *January*, 1869, in respect of the said occupation:

That the appellant was the sole tenant of the house in respect of which the claim was made, and was alone liable for the payment of the rent and rates payable in respect thereof.

The appellant had, during three months of the year preceding the last day of *July*, 1869, let a furnished bed-room in his house as a sleeping apartment to a lodger, who had also the joint use of another apartment as a sitting-room. The appellant provided board for his lodger, and received a fixed weekly sum for such lodging and board, but such lodger was not in any way responsible for the payment of the rent or rates, and his occupancy might at any time have been terminated on one week's notice, given by either party.

Upon this state of facts the Revising Barrister decided that the appellant was a "joint occupier" of his "dwelling-house," within the meaning of the proviso at the end of section 3 of "The Representation of the People Act, 1867," and on that ground disallowed his claim to be placed on the register of voters for the said borough.

The Revising Barrister was of opinion that the words of the proviso, "joint occupier of any dwelling-house," did not, either by express words or necessary intendment, mean joint occupier of any dwelling-house "as owner or tenant;" that the words "as owner or tenant" being omitted in the proviso, the words "as joint occupier of any dwelling-house," were comprehensive enough to include lodgers occupying a part of a house; that by section 4 of the same statute, lodgers are qualified to vote if occuping apartments of £10 value, unfurnished, "separately, and as sole tenants;" and that the interpretation clause, section 61, defines dwelling-house to be any part of a house occupied "as a separate dwelling."

The Revising Barrister thought that the claimant did not occupy any part of his house as a separate dwelling within this definition. On reference to the 27th section of the 2 *Will.* 4, c. 45, the £10 occupation franchise is there defined to be, by express words, an occupation as "owner" or "tenant;" and as the Legislature had left out those words in the proviso to the 3rd section of "The Representation of the People Act, 1867," the Revising Barrister was of opinion that if the intention was to exclude only joint occupiers of any dwelling-house as "owners or tenants" in the same right under that section, apt words would have been introduced to

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express such intention, and that the words as they stood included lodgers as occupiers, as well as owners or tenants.

Secondly,—The Revising Barrister was of opinion that the lodger was a "joint occupier" with the claimant, of the said dwelling-house as tenant, and that there was nothing in the section to import a tenancy under the same landlord, or in the same right, to be meant, nor was this held to be necessary under the "Old Reform Act," *Rogers* v. *Harvey* (*a*); that a "lodger" is a "tenant," *Cook* v. *Humber* (*b*), and so called in section 4 of "The Representation of the People Act, 1867;" and that it has been held in the case last quoted "to be immaterial under what denomination of tenant he is classed, whether as a lodger, a termor, or a lessee." The Revising Barrister was further of opinion, under the authority of *Cuthbertson* v. *Butterworth* (*c*), that the lodger was a joint occupier of the same dwelling-house with the claimant, because the claimant was not "separately rated" for that part of the house which he occupied as a separate dwelling, so as to constitute that part of it a separate dwelling within the meaning of the 61st section of "The Representation of the People Act, 1867."

The question for the opinion of the Court was, whether the Revising Barrister was right in disallowing the claim. If he was wrong in point of law, then the claimant was to have his name inserted in the list of voters for the borough of *Bradford*.

James, H., Q. C., for the appellant. The case turns

(*a*) *Keane & Grant*, 169; *S. C.*, 5 *C. B.* (*N. S.*) 3.

(*b*) *Id.* 413; *S. C.*, 11 *C. B.* (*N. S.*), 33.

(*c*) *Ante*, p. 188; *S. C.*, *L. R.* 4 *C. P.* 523.

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upon the construction of sub-sect. 3 of sect. 3 of "The Representation of the People Act, 1867," and in effect comes to this, whether the occupier, as owner or tenant of premises below £10 in annual value, who lets lodgings, is thereby disqualified. It is submitted that upon the cases and the words of the statute the Revising Barrister was wrong.

[BRETT, J. The facts show the lodger had not the separate control of his lodgings.]

That is so; and although he has the right to use chambers and passages of the house, yet he is only an inmate. The words of sect. 3, sub-sect. 3, are "Has during the time of such occupation been rated as an ordinary occupier in respect of the premises so occupied by him within the borough to all rates, &c. . . . ." And the proviso is "That no man shall be entitled to be registered as a voter by reason of his being a joint occupier of any dwelling-house." The word "occupier" throughout that clause and proviso must be taken to mean the same sort of occupier as is mentioned in sub-sect. 2 of sect. 3, that is to say, "an inhabitant occupier *as owner or tenant.*" Even if those words as owner or tenant were not in that clause, yet as matter of legal construction "occupier" cannot mean a mere lodger. He is not an occupier.

[KEATING, J. It does not appear here that he *occupies* the house.]

No more than a schoolboy can be said to occupy the house he resides in because he has a separate sleeping

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room. If the view insisted on prevail, the consequence will be that a lodger may have a vote in respect of a less part of a house, while his landlord will have none in respect of the larger part, or even the whole. What is the meaning to be attached to the words of the proviso? Can it be said that the word "occupier" there is to be read in a different sense to that which it bears in the clause where it is defined as "owner or tenant?"

[BRETT, J. What other occupier can be suggested under the section than as "owner or tenant?"]

None. In a popular sense, indeed, a man is sometimes said to occupy when residing is really meant, but that is not the legal sense. The man who pays rent, rates, and taxes, is the occupier. Such should be the legal construction under the Acts relating to the franchise, even if there were no controling words like these "as owner or tenant." *Fludier* v. *Lombe* (*a*) bears upon the question. There persons who were householders of houses above the value of £10 a year, and paid scot and lot, but had let part of their houses to lodgers, were held to be notwithstanding occupiers of houses, and entitled to vote under the stat. 11 *Geo.* 1, c. 13, for regulating municipal elections in *London*.

Lord *Hardwicke* says, "Why, then, does their having let lodgings make them cease to be the sole occupiers within the meaning of the statute? And I must own I have no notion that they do thereby cease to be so; for no man can be occupier of a house but either by living in one of his own or in one that he hires; and a

(*a*) Cases temp. *Lord Hardw.* 307.

lodger was never considered by any one as an occupier of an house. It is not the common understanding of the word, neither the house, nor even any part of it, can be properly said to be in the tenure or occupation of the lodger."

In the execution of process in no case is the lodger treated as an occupier.

[He was stopped by the Court.]

Francis, for the respondent. No doubt the question turns upon the construction of the proviso. It is submitted that there was a joint occupation, or that the claimant had not the entire occupation of the house.

[BOVILL, C. J. Do you contend that no man who takes a lodger can vote as occupier?]

No. But here is a joint occupation of a part. Subsect. 2 limits the qualification to a "dwelling-house." By the intepretation clause, sect. 61, "'Dwelling-house' shall include any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor." The claimant does not occupy an entire house, nor yet part of a house, within the interpretation clause, for there is neither structural severance, nor separate rating. Where is the line to be drawn? If he had a joint occupation of the whole, that by the terms of the proviso would not confer the qualification. He must be sole occupier of the whole house; while here he has only a divided occupation, joint as to part of it.

[KEATING, J. Do you say the joint use of the sitting-room disqualifies?]

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Yes, the lodger jointly occupies.

[BRETT, J. Would the case of joint use of a sitting-room be as strong as the *separate* occupation of a bed-room ?]

Within the terms of this proviso it is submitted it is so.

The 29th sect. of the Reform Act, 2 *Will.* 4, c. 45, conferred the right of voting upon joint occupiers, in respect of a yearly value for each of not less than £10, but there the Legislature uses the words as "owner or tenant"—here it has omitted those words. There is this distinction between this case and that of *Fludier* v. *Lombe ;* that was the letting of a room merely, this the granting of a joint use and occupation.

BOVILL, C.J. Throughout "The Representation of the People Act of 1867," a clear distinction is drawn between occupiers of dwelling-houses and lodgers in dwelling-houses. In this case the claimant clearly came within the meaning of the second clause, or sub-section of the third section of the Act, being "an inhabitant occupier as tenant" of a dwelling-house within the borough. Then a question is raised, whether he was a "joint occupier" under the proviso at the conclusion of section 3. He had let part of his house to a lodger, and the lodger had the sole use of a furnished bed-room, and the joint use with the claimant of another room—a sitting-room. This, however, does not, in my opinion, make the claimant a joint occupier within the proviso. The lodger was not the occupier of a dwelling-house at all ; he was an inmate of the house rather than

an occupier. This appeal must therefore be allowed, and the appellant admitted to the franchise.

WILLES, J. I am of the same opinion. The only safe mode of construction is to take the language of the Legislature, and ascribe a plain meaning to the words it has used. (He read sect. 3.) I will consider what is *primâ facie* the meaning of the words used in section 3, and whether that is not a consistent meaning. The clause enacts that the person who is to have the franchise must be "an inhabitant occupier as owner or tenant" of a dwelling-house. Now, a dwelling-house is a separate habitation, and the occupier is one who has the general control of the outer door. The claimant is clearly in a condition to satisfy the clause, if the proviso does not except him from it. Has, then, the proviso the effect of excluding from the franchise one who is an inhabitant occupier of a dwelling-house, because he has a lodger, who occupies one room in the house, and has the right to take his meals in another? Clearly it has not, unless joint occupier in the proviso means other than "as owner or tenant," whereas the reference by the words "Provided that no man shall *under this section*," to the former part of the same section, shows clearly that occupier "as owner or tenant" is meant. The circumstance that those words are not repeated in the proviso, is no reason for excluding them from it, when to repeat them would have been mere tautology. Then is this claimant a joint occupier as owner or tenant? I think not. As to the room in which he took his meals, he was plainly not joint occupier of it; and as to the bed-room, he was nothing more than a lodger. Turning to the 4th section, we find the franchise given to every man

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who, as a lodger, has occupied lodgings "separately, and as sole tenant;" these words seem to be used in contra-distinction to the words "joint occupier," in section 3, and show the distinct footing upon which lodgers are placed, as compared with those occupying as tenants. It is not, however, necessary to follow that reasoning further. When we turn to the interpretation clause, sect. 61, the language is not that of exclusion. It enacts that "dwelling-house shall *include* any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor." That definition would be satisfied by a part of a dwelling-house, with all internal communication, cut off, with access secured by a separate outer door, and separately rated. Without regard to value, each would constitute a separate house. It is not necessary to do more than refer to section 29 of the Reform Act of 1832, by which joint occupiers were qualified to vote under certain circumstances. The conclusion we have come to reconciles former legislation with the present, and the present with itself, and accords with the natural meaning of the language used. The decision of the Revising Barrister was, in my opinion, wrong, and the appeal will therefore be affirmed.

KEATING, J. I am of the same opinion. I cannot help thinking that the meaning of section 3 is very plain upon this point, when we consider the previous state of the law. Under the Reform Act, to confer the franchise in boroughs, an occupation as owner or tenant was required of the yearly value of £10. The last Act was passed with the object of extending the franchise, by getting rid of the £10 limitation. But under the former law, joint occupation, provided the rent of each

joint occupier amounted to £10 a year, gave votes to each. Therefore, sect. 3, by sub-sect. 2, having made it no longer necessary that the occupation franchise should depend on value, it at once became necessary to insert a proviso to exclude joint occupiers of a house from claiming to vote under this section. Hence the proviso "that no man shall, under this section . . . . by reason of his being joint occupier of any dwelling-house," &c. Here, it appears, the appellant had occupied for nine months, during which he was plainly entitled, but for the last three months of the qualifying year he let off a room. Under the previous law that alone would not have disqualified him, for he still kept the control of the outer door. It is said, however, that allowing the lodger the joint use with himself of a room, other than that which he occupied separately, disqualified the claimant, because it made him the joint occupier of "part of a dwelling-house," and, therefore, a house or dwelling-house within the words of the proviso, and sect. 61. In my opinion, the proviso has no such application, and therefore the appellant is entitled to succeed.

BRETT, J. I am of opinion that the appellant is qualified under the 3rd section. That section gives the right to vote to a particular class of persons occupying as owners or tenants, but at the same time limits the class to those who occupy as owners or tenants, and the proviso expressly referring to what had gone before in the same section so plainly refers to sub-section 2, as to make it unnecessary in the proviso to repeat the words as owner or tenant after joint occupier. Section 4 shows a manifest intention to distinguish lodgers from occu-

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piers. The reason for inserting the proviso is evident, because, under the former Act, joint occupation gave the vote in certain cases, if the annual value was sufficient. Then, in passing this Act, it occurred to the Legislature that, by analogy, the vote might be demanded by a number of joint occupiers of a small tenement, when all limit as to value had been removed. The proviso was therefore inserted for the purpose of confining the vote to those only who were occupiers as owners or tenants.

Judgment for appellant, without costs.

Attorneys—For Appellant, *Johnson & Weatheralls*, agents for *Rawson, George, & Wade, Bradford.*

For Respondent, *John Cann*, agent for *McGowen, Bradford.*

SMITH, Appellant; LANCASTER, Respondent.

Nov 17.

The occupier as tenant of a house under 2 *Will.* 4, c. 45, sect. 27, does not cease to be such occupier by letting off part, provided he retain the general control of the whole.

The occupier, as tenant, of "chambers," constituting a "house" in an inn of court, let two of the rooms to tenants under agreements for rent, (to include service, rates, and coals,) with keys to the rooms and to the outer door. *Held*, that the occupier had not ceased, by such sub-letting, to be the occupier within the Act.

Semble, per *Willes*, J., the lettings were not, strictly speaking, tenancies, but rather personal agreements for occupation, limited to special purposes, more resembling enjoyment as licensee, or occupation by a guest at an inn, or by a lodger?

THIS was an appeal from the decision of the Revising Barrister for the city of *London*.

The case stated as follows:—*George James Philip Smith*, hereinafter called the appellant, was on the list of voters for the *Inner Temple*, in respect of his occupation of chambers at No. 1, *King's Bench Walk*.

The appellant held, as tenant, an entire set of chambers at No. 1, *King's Bench Walk*, *Temple*, aforesaid, so structurally severed from the rest of the building as to be of themselves a house, under a demise from the benchers of the *Inner Temple*, the owners thereof, at a yearly rent of £70.

The chambers consisted of three distinct rooms, not communicating together, and a vestibule into which the rooms respectively opened.

One of these rooms was occupied by the appellant, and used by him in transacting the business that came to him in the exercise of his profession of a barrister.

The appellant demised each of the other two rooms to two persons respectively. Each of these persons held under an agreement in writing in the following form *mutatis mutandis*:—

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"1, *King's Bench Walk*, 15th *Dec.*, 1868.

"Mr. *G. J. P. Smith* agrees to let, and Mr. *Lister* agrees to take, the north back room of these chambers, from the 29th of *October* last, at the rent of £30, payable quarterly on &c. in each year, the rent to include attendance of clerk, laundress, rates, taxes, and coals; the tenancy determinable at any time by either party giving one quarter's notice."

The two tenants entered under the said agreements into the occupation and possession of the several rooms so let to them as aforesaid, and used them in transacting the business that came to them in the exercise of their profession as barristers. They had the services of the clerk and laundress who were engaged by the appellant, and were supplied with coals according to the terms of the agreement.

There are no rates for the relief of the poor in the *Inner Temple*, but all other rates and taxes were paid by the appellant. No one resided in any part of the chambers. Both of the said rooms so sub-demised as aforesaid were let unfurnished.

The appellant and each of his two tenants had a key to the outer door. It was not the practice to lock the doors of the rooms, but it was admitted that the tenants had the right to do so at all times.

All other requisites for entitling the appellant to be retained on the list of voters in respect of the above qualification were duly proved.

The appellant claiming to be retained on the list in respect of his occupation as tenant of the entire set of chambers, it was objected, that having regard to the above facts, the appellant ought to be struck off the

list, on the ground that, by virtue of the aforesaid demises to his under-tenants, the landlord (the appellant) had divested himself of all right of occupation of the parts demised, and thereby the tenants had acquired an independent occupation of the parts demised, to the exclusion of the appellant.

For the appellant, it was argued that notwithstanding the said demises, he retained such an occupation of the entire set of chambers as to make him a tenant occupying a house within the meaning of the Reform Act, 2 *Will.* 4, c. 45.

The Revising Barrister decided that the objection was good; holding that at law, in the absence of any express reservation to the appellant of some control over, or occupation of, the parts demised, the sub-tenants, under or by virtue of the aforesaid agreements, acquired an independent occupation, and to the exclusion of the appellant, of their holdings; and that it could not be inferred at law, having regard to the facts before stated, and more particularly to the fact that the appellant did not reside, that he retained any occupation of the parts so demised by him as aforesaid, and the Revising Barrister accordingly struck off or refused to insert on the register the names of the appellant and of sixty-seven other persons, whose cases were consolidated with the principal case.

The question was, whether the occupation by the appellant of the said chambers was sufficient to entitle him to have his name inserted on the register of voters for the city of *London*.

Prentice, Q. C., for the appellants. No question is raised as to the sufficiency in point of annual value of

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the appellant's interest in the premises. The only point for discussion is, has the appellant, by the sub-letting described in the case, deprived himself of his otherwise clear right to vote? In *Cuthbertson* v. *Butterworth* (*a*), the Court held that the respondent, whose occupation was almost identical with that of the under-tenants here, was not entitled to vote, so that if the decision of the Court be against the appellant it will have the effect of disfranchising all connected with this and similar tenancies in the *Inns of Court*. It is submitted that the appellant is, within the meaning of sect. 27 of 2 *Will.* 4, c. 45, the occupier of the whole premises, but if that be doubtful sect. 29 may be resorted to. Under sect. 27, then, the appellant is actual or constructive occupier of the whole house, the fact of his not residing on the premises being of no importance. *Reg.* v. *Henry Smith* (*b*) is strongly in favour of the vote. There the question was whether the defendant, by letting some of his rooms to other tenants on terms very like those described here, had parted with the possession, so that the sub-tenants, and not himself, would be rateable in respect of their occupation, and the Court, in giving judgment, said, "There is no doubt that exclusive possession of a part only of a house may be given, so as in effect to make the two parts of the house separate tenements; the question in the present case was whether such possession had been given, and we are of opinion that it had not."

Wansey, appellant, *Perkins*, respondent (*Hill's* case) (*c*), decides in a similar case to this, that the under-tenants are only lodgers or inmates.

(*a*) *Ante*, p. 188.
(*b*) 30 *L. J., M. C.* 74.
(*c*) 1 *Lutw. Reg. C.* 252; *S. C.*, 8 *Scott, N. R.* 978.

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[He was stopped by the Court.]

Meadows White for the respondent. The claimant is not an occupier of a house within the Act. He occupies only part of a house. The qualification must be a whole house, though the house itself may consist only of a set of chambers.

[BRETT, J. Is exclusive occupation necessary?]

There appears here no such independent occupation and severance of a "house," and possession by the claimant, as was insisted on in *Cook* v. *Humber* (*a*). This case states facts from which the Court should draw the inference that the appellant has excluded himself from the possession of his house, or the main part of it.

[BOVILL, C.J. Who do you say would be rateable as occupier?]

In *Reg.* v. *Smith* (*b*), cited for the appellant, the person rated as occupier found servants who lived on the premises to wait on the sub-tenants, clean the rooms, &c. In *Rex* v. *Inhabitants of St. Nicholas, Colchester* (*c*), on a question of acquiring a settlement by renting and occupying a tenement, the Court held that one who underlet any part was not in the *actual* occupation.

[*Prentice*, Q.C. That was on the words of the statute

(*a*) *Kea. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*b*) 30 *L. J., M. C.* 74; *nomine*, *Smith* v. *Overseers of St. Michael, Cambridge*, 3 E. & E. 383.

(*c*) 2 *A. & E.* 599.

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which explained and amended the previous one (6 *Geo.* 4, c. 57) by expressly requiring that the occupation should be *actual* and not *constructive.*]

It is submitted that the occupation intended by the Reform Act was *actual.* By the terms of the agreement there is a right conferred to exclude any one else, even the lessor himself, from the chamber let. Stress has, in some of the cases, been laid on the possession by the tenant of a separate key to the outer door. That exists here. *Score* v. *Huggett* (*a*).

[WILLES, J. Is not this a mere personal agreement under which the sub-tenant must occupy, and he only? Could he substitute another?

BRETT, J. Do you defend the finding of the case, which seems to treat it as a matter of law whether the occupation was sufficient or not?]

Yes; it is submitted that the facts show a case of parting entirely with, and excluding himself from, the control of the chambers demised.

[BRETT, J. But his servants would enter to clean?

WILLES, J. To take in coals and light fires? Those are circumstances to show that the owner does not part with the control. It is a matter of fact, not of law.]

These agreements are inconsistent by their legal

(*a*) 1 *Lutw. Reg. C.* 198; *S. C.*, 7 *M. & G.* 95.

effect with any such occupation as would confer the franchise.

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Prentice, Q.C., was not called on to reply.

BOVILL, C.J. It appears from the case that the chambers in question are, in point of structural severance, a house within the decisions and sect. 27 of the Reform Act, 2 *Will.* 4, c. 45. The appellant has taken and occupied them, and would be the occupier within the meaning of the Act, if he had not sub-let parts of the house to two tenants. The question is, whether by doing so he has ceased to be the occupier qualified to vote. It has already been decided in *Cuthbertson* v. *Butterworth* (*a*), that persons in a similar position to that of the under-tenants in this case cannot be considered as occupiers of "a house." What then is the effect upon the principal occupation or tenancy of such sub-letting?

In *Fludier* v. *Lombe* (*b*), Lord *Hardwicke* held that the letting of lodgings so that the original rent was thereby reduced below £10 a year, did not disqualify householders from voting for a common councilman, under 11 *Geo.* 1, c. 18, sect. 8, which required the voter to be *sole* occupier of a house "of the true and real value of £10 a year" (*c*).

Reg. v. *Smith* (*d*) shows that the appellant would be the person properly rateable as the occupier of the whole house, and in my opinion he is equally the

(*a*) *Ante*, p. 188; *L. R.*, 4 *C. P.* 523.

(*b*) *Cas. temp. Hard.* 307.

(*c*) See also *Phillips's case*, *Alc. Reg. C.* (*Ireland*), 20; *Duigenan's case*, *Ibid.*, 116; and *Reg.* v. *M. of Eye*, 9 *A. & E.* 679.

(*d*) 3 *E. & E.* 383; 30 *L. J.*, *M. C.* 74.

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occupier within the Act we are construing of the whole premises. It is true that his tenants have the exclusive use of some rooms, with additional conveniences, and have keys to the outer door, but their occupation more resembles that of a lodger who has exclusive possession of a room. Such a letting has never been held to deprive the occupier who has and retains the general control over the whole of the franchise. There is no pretence for contending here that these are joint occupiers. We have already (*a*) decided that the occupier of a house as tenant does not cease to be so simply by letting out part of the premises to one in the character of a lodger.

The case of *Rex* v. *St. Nicholas, Colchester* (*b*), has been cited, but that, as well as the previous decision by which it was governed, of *Rex* v. *St. Nicholas, Rochester* (*c*), was based on the peculiar language of the two Acts of Parliament, 6 *Geo.* 4, c. 57, and 1 *Will.* 4, c. 18, the latter Act insisting on *actual* occupation instead of the constructive occupation, which had been held to satisfy the former statute. It is to be remarked that Lord *Denman*, C.J., in *Rex* v. *St. Nicholas, Rochester*, points out that the meaning of the word "occupied" varies with the subject, *e. g.*, burglary, right of voting, liability to rating, and that all these differed from the then case by reason of the peculiar language and intention of the 1 *Will.* 4, then under construction. Those decisions are, therefore, clearly not authorities for our guidance in this case. For these reasons I am of opinion that the appellant is the occupier entitled to

(*a*) *Brewer* v. *McGowen*, *ante*, p. 275.

(*b*) 2 *A. & E.* 599.

(*c*) 5 *B. & Ad.* 219.

vote, and that the decision of the Revising Barrister must be reversed.

WILLES, J. I am of the same opinion. If it were necessary, special reasons might be found to show that the sub-letting of one room of a set of chambers like this does not deprive the tenant of the whole, of the right to vote. For it is obvious that an agreement of the kind is not the ordinary case of letting to a tenant for any purpose he may think proper. It is peculiar, and the use is limited to the individual, and for special purposes. It more resembles an enjoyment as licensee, or an occupation by a guest in an inn, or by a lodger. It is not, however, necessary to dwell on such special considerations, though they might serve to dispose of the case, because I am of opinion that the letting off part of a house does not deprive the occupier of the remainder, of the right to vote, provided he retain the mastership and general control over the whole and the outer door.

Suppose, as a test, the case of a landlord letting a house, with the exception of the wine cellar; surely the occupier would not, by reason of such exception only, lose his vote. I entirely agree with the decision of this Court in *Cuthbertson* v. *Butterworth*. I would add a reference to the case of *Toms* v. *Luckett* (*a*), and the judgment of *Maule*, J., there. He says, "where the owner of the house is a person who lives in and occupies the whole of it, and takes in some other person to live with him in the house, although that person may occupy a room therein which nobody else occupies, and although he may have ingress and

(*a*) 2 *Lutw. Reg. C.* 19; 5 *C. B.* 23.

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egress to and from that room whenever he pleases, yet, if the owner of the house retains his general character as master of the house which he did before, then that person so occupying is a lodger, and not a tenant, within the Reform Act." To speak of "perfect control" of the outer door, as in the statement of the case in *Cuthbertson* v. *Butterworth*, is a wrong expression. That would imply a right so extensive as to chop it up and burn it. The right to maintain trespass in respect of it would be a better description, and that right, I am of opinion, belonged here to the appellant, who had, besides, the general control and dominion of the "house." The Revising Barrister, by his expression "at law," seems to have had in his mind the notion of some legal criterion, which obliged him to come to the conclusion he formed, but none such exists.

KEATING, J. The appellant occupied the whole house, and had the right to the franchise. He has not lost the right by letting part to one more resembling a lodger than any other kind of tenant.

BRETT, J. The only objection made to the appellant's right to vote is, that by binding agreements he has let the exclusive use of two of the rooms in his occupation. Even if the agreements have so bound him, he is still, in my judgment, tenant and occupier of the whole, and has not done sufficient to deprive himself of his vote.

Decision reversed.

Attorneys—For Appellant, *Harper, Broad, & Manby.*
For Respondent, *Travers Smith & De Gex.*

DURANT, Appellant; KENNETT, Respondent.

Nov. 19, 20.

THIS was an appeal from the decision of the Revising Barrister for the borough of *New Windsor*.

The case stated as follows:—

At a Court held in *October*, 1869, for the revision of the list of voters for the said borough, *Benjamin Chandler Durant* duly objected to the name of *Edward Kennett* being retained on the householders' list of voters for the parish of *New Windsor*, in the said borough. The description of the respondent on the said list was as follows:—

Name.	Place of Abode.	Nature of Qualification.	Street, &c., where Property situate, &c.
Kennett, Edward	*Travers' College*	House	*Travers' College*

The respondent occupied, during the qualifying period, one of seven houses, known as *Travers' College*, each of which was numbered and separately rated to the poor rate, and he had paid all poor rates which had become payable by him in respect of the premises.

The respondent was one of the seven Naval Knights

The Naval Knights of *Windsor* are a collegiate establishment of an eleemosynary character, incorporated in 1798 by royal charter. The charter contained various rules of discipline, enforcing observance under pain of expulsion, and authorizing the framing of other rules by the Crown. It prescribed a collegiate mode of life, in a building to be erected, and a common hall and table. A range of buildings was erected accordingly, forming separate dwelling-houses, but with a common dining-hall. Each knight, on appointment, with the consent of the governor, chose one of the houses, which he occupied exclusively, repairing and paying rates: *Held*, that this was not an occupation "as owner or tenant," but simply as a member of a corporation.

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of *Windsor*, who were incorporated by royal charter, bearing date the 23rd of *June*, 38 *Geo.* 3 (1798), by the name of "The Poor Knights of *Windsor* of the Foundation of *Samuel Travers*, Esq."

By the 24th and 25th *Vict.* c. 116, s. 4, it was enacted that "The said Poor Knights shall henceforth be styled Naval Knights."

By the charter (which was to be referred to as part of the case), after reciting that *Samuel Travers*, Esq., deceased, by his will, dated the 16th of *July*, 1724, demised all his real and personal estate unto his executors and their heirs, upon trust out of the rents and profits, to settle an annuity or yearly sum of £60, to be paid to each and every one of seven gentlemen, to be added to the then eighteen Poor Knights of *Windsor;* the said annuities to be charged upon an estate of £500 per annum, to be purchased and set apart for that purpose, in the county of *Essex;* and that the testator humbly prayed that the said seven gentlemen might be incorporated by charter, with a clause enabling them to purchase and hold lands in mortmain, and that a building, the charges whereof to be defrayed out of his personal estate, might be erected or purchased in or near the castle of *Windsor*, for a habitation for the said seven gentlemen, who were to be superannuated or disabled lieutenants of English men-of-war; but the repairs to be, in the first place, paid out of the said estate of £500 per annum, and then £12 per annum to be applied to the governor or senior of the seven, and the remainder to be equally divided between him and the other six, and that the testator desired that the seven gentlemen so to be incorporated might be single men without children, inclined to lead a virtuous, studious, and devout life, to be re-

moved if they should give occasion for scandal, and that the testator declared his mind to be that they should live in a collegiate manner, in order whereunto he would have £26 a year deducted out of their several allowances to keep a constant table, and that the testator appointed the Chief Governor of *Windsor Castle*, the Dean of *Windsor*, and the Provost of *Eton College*, to be visitors, with power for them or any two of them to act, and that as often as any vacancy should happen, the testator desired they might be thus supplied, *viz.*, the Commissioners of the Royal Navy to choose three lieutenants for each vacancy, out of which the Lord High Admiral or the Commissioners of the Admiralty for the time being to choose two, and the King's Majesty to nominate one of them; and that by an order of the Court of Chancery, bearing date the 26th of *July*, 1793, in a cause pending in the said Court, proposals for setting apart a part of the testator's estates, in the county of *Essex*, for the purpose of making a provision for the support and maintenance of the said seven gentlemen to be added to the eighteen Poor Knights of *Windsor*, instead of purchasing an estate for that purpose, and also the purchasing a piece of ground at *Windsor*, whereon to erect an habitation for the said seven gentlemen, and the erecting such new buildings thereon would be a proper execution of the trusts and directions in the testator's will respecting the same; the seven persons therein named and their successors to be elected and nominated in the manner prescribed in and by the will of the said *Samuel Travers*, were constituted one body corporate and politic, by the name of "The Poor Knights of *Windsor* of the Foundation of *Samuel Travers*, Esq.," and by that name were to have perpetual succession and

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a common seal, with capacity to receive and hold for the ends and purposes of their institution, the land or ground to be purchased for the purpose of erecting a house or building for their habitation, and the house or building to be erected thereon, as well as the lands, tenements, and hereditaments in the county of *Essex*, to be appropriated and set apart under the direction of the Court of Chancery, for their support and maintenance, in such manner, and under and subject to such conditions, restrictions, and regulations as the Court of Chancery should direct. The charter further ordained that there should be a governor of the said corporation, *viz.*, the senior of the lieutenants, members of the corporation, according to their rank in the Royal Navy; and that the Chief Governor of *Windsor Castle*, the Dean of *Windsor*, and the Provost of *Eton College*, for the time being, or any two of them, should be visitors of the said corporation; and that the said seven knights and their successors should observe and obey the rules, orders, and regulations thereinafter contained, and such further rules, orders, and regulations as the King, his heirs, or successors should, at any future time, make for the better government of the said knights, or the better carrying the intentions of the founder into execution, and as the Court of Chancery should also make or declare in furtherance of the will of the said *Samuel Travers*.

The charter further ordained that the said seven knights and their successors should lead virtuous, studious, and devout lives, and should daily attend divine service in the chapel in *Windsor Castle*, and *should live together in a collegiate manner in the house or building to be erected for their residence, and keep their table together in their common hall*, and that such table should

be provided out of their common stock or purse, and that they should not go away from and leave their said house, and absent themselves therefrom for more than ten days in any one year, without a license first obtained for that purpose from the said visitors, upon reasonable cause, and that during their residence at their said house they should not be out of their respective apartments, nor haunt the town, the alehouses, or the taverns, and that the Governor of the said seven knights, for the time being, should have the care and custody of their common seal, and that the other six should be obedient to the Governor, and all the seven should be obedient to the said visitors, in the observance of the rules, orders, and regulations therein contained, and of all others which the King, his heirs, and successors should thereafter make for their orderly behaviour and government.

The charter further ordained that the said visitors should once in every year appoint a day and hour at which the said seven knights and their successors should be warned to be present, and should cause the rules, orders, and regulations to be read to them, and that if any of them should neglect to attend, not having leave of absence from the said visitors, or should offend against the said rules, orders, and regulations, it should be lawful for the said visitors to impose a reasonable fine or penalty, and, in case the offence should seem to require such punishment, it should be lawful for them to give a solemn warning to the offender, not to offend again in the like manner, and he that should have been twice so warned should, upon the third offence, be expelled or removed by the said visitors; and that if any knight should refuse or neglect to pay any fine or penalty, he

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should be liable to be expelled or removed by the said visitors; and that the said visitors should also have full power to expel or remove any of the said seven knights and their successors, who should marry or give occasion for scandal, or who might be convicted of felony, or any notable crime, and that the said seven knights and their successors should, before they were let into possession of the apartments to be erected for them, take their oaths that during the time of their continuing such knights, they would observe, conform to, and keep all the rules, orders, and regulations contained in those presents, and all such other rules, orders, and regulations as should thereafter be made as aforesaid.

By indenture of bargain and sale, bearing date the 26th of *June*, 1799, (approved by the Master and enrolled in the Court of Chancery), *Henry Emlyn* conveyed a messuage or tenement, with the garden and ground thereunto belonging, situate in *Datchet Lane*, near *Windsor Castle*, in the parish of *New Windsor*, to the said Poor Knights and their successors, for the ends and purposes of their institution, and subject to such orders and regulations as the Court of Chancery should, from time to time make concerning the same.

The college, which was erected on the ground so conveyed, consists of a range of buildings forming seven dwelling-houses, containing three apartments each, *viz.*: kitchen, sitting and bed-room, and a mess-house, with kitchens and other offices at the back. There is a colonade in front of the houses, and a small lawn walled in, with a gate opening into *Datchet Lane*, now called *Datchet Road*.

The mess-house is separately rated to the poor-rate, and the rates payable in respect of it are paid out of the

common fund of the college. Each knight keeps the house, which he occupies, in repair.

In the year 1867, the respondent was appointed by royal warrant, to supply a vacancy, and by virtue of that appointment he went into occupation of a vacant house in the said college, which he chose, with the consent of the Governor. This is the house which he now occupies, and he holds it for his life, subject to his being expelled or removed for any of the causes above stated.

The respondent claimed to have his name retained upon the said householders' list of voters, on the ground that he was the inhabitant occupier as owner of the said house, and relied on *Fryer* v. *Bodenham* (*a*). It was objected that the ownership of the said house was in the corporation aggregate, and not in each member of it separately, and *Heath* v. *Haynes* (*b*) was cited.

The Revising Barrister held that the respondent was the inhabitant occupier of the said house as owner, and retained his name on the list. The cases of four other persons were consolidated with the principal case.

If the Court should be of opinion that the respondent was the inhabitant occupier of the said house as owner, his name was to be retained; otherwise his name and those of the four other persons were to be expunged.

H. James, Q.C. for the appellant. The respondent's name ought to have been expunged by the Revising Barrister, since he was not in occupation of the house in respect of which he claimed the franchise, either as owner or tenant. He was not in occupation as owner, since the ownership was not in him, but in the cor-

(*a*) *Ante*, p. 204; *S. C.*, *L. R.* 4 *C. P.* 529.

(*b*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

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poration. He was not in occupation as tenant, since, although he was *de facto* occupying, his occupation was simply that of the corporation occupying by one of its members. No doubt it was by virtue of his appointment that the respondent got possession of the house, but only in the capacity of member of the corporation. The statement of the Revising Barrister as to the respondent's *holding his house for life* might be important, if the Revising Barrister had not at the same time set out for the consideration of the Court the charter, upon which he must rely as the foundation of that statement. Read in conjunction with the charter, the statement becomes no more than the Revising Barrister's opinion as to how the charter should be construed. That the individual members of a corporation aggregate cannot vote in respect of the corporate property, even though by agreement among themselves they enjoy it in severalty, is well settled (*a*). The disqualification would seem to have originated in the doctrine that a corporation is incapable of doing any personal act requiring knowledge (*b*). But however that may be, the authorities are clear, and *Heath* v. *Haynes* (*c*) (which, like the present case, was the case of a borough vote) is distinctly in point. *Heath* v. *Haynes* (*c*) was the case of a corporation in a situation almost identical with the present, yet, although the claimants had there, as here, the exclusive occupation of separate residences, they were held not entitled to vote in respect of them, the reason assigned by the Court being that they did not occupy as owners or tenants. *Cockburn*, C.J., in giving judgment, said:—"We are

(*a*) *Heywood* on "County Elections," p. 115-118.

(*b*) Com. Dig. Franchises (F. 14), Vin. Abridg. Corporations (H. 2).

(*c*) *K. & G.* 99, 117; *S. C.*, 3 *C. B., N. S.* 389, 410.

bound by the words of the section: it is not enough to show a beneficial occupation, unless it be an occupation as owner or in the legal relation of tenant to a landlord. Now it is clear, and indeed it is conceded, that these parties do not occupy as owners—the ownership of the property being *ex concessis* in the corporation aggregate. Then, do they occupy as tenants? It appears to me they do not. There is nothing in the circumstances under which their occupation arises which creates either expressly or by implication the legal relation of landlord and tenant. The corporation, as it appears to me, occupies in the persons of its several members. If any of the individual members were improperly interfered with in his occupation, his only remedy would be by an application to the Court of Chancery to have the charity administered according to the will of the founder." *Davis* v. *Waddington* (*a*), *Heartley* v. *Banks* (*b*), and *Bridgewater* v. *Durant* (*c*), are all authorities in the appellant's favour. In the last case, *Erle*, C. J., in delivering judgment, said :—" Occupation alone of a house is not sufficient to qualify. Thus occupation as a member of a corporation aggregate *Heath* v. *Haynes* (*d*), or as a receiver of charitable bounty *Heartley* v. *Banks* (*b*), ... have been held not to qualify." Whether the occupation of a mere wrongdoer, who claims to occupy as owner, would be sufficient for the borough franchise, cannot test the present case. For here the charter, which constitutes the respondent's title, distinctly negatives the occupa-

(*a*) 1 *Lutw.* 159 ; *S. C.*, 7 *M. & G.* 37 ; 8 *Scott, N. R.* 807.

(*b*) *K. & G.* 219 ; *S. C.*, 5 *C. B., N. S.* 40.

(*c*) *K. & G.* 377; *S. C.*, 11 *C. B., N. S.* 7.

(*d*) *K. & G.* 99 ; *S. C.*, 3 *C. B., N. S.* 389.

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tion being claimed in the capacity of owner, and shows that it is claimed simply and solely as member of a corporation. The title set up by the respondent is not disputed here, but the Court is asked to construe what that title is. *Fryer* v. *Bodenham* (*a*) (the case of *Coningsby Hospital*, which was not a corporation) is not adverse to the appellant. That case went expressly on the authority of *Simpson* v. *Wilkinson* (*b*) and *Roberts* v. *Percival* (*c*), cases which both turned on the question whether *Burleigh Hospital* was a corporation. *Burleigh Hospital* was held not to be a corporation, and its inmates were held entitled to votes; but if *Burleigh Hospital* had been held to be a corporation, the votes would unquestionably have been disallowed. In none of those cases was it known in whom was the legal estate, if not in the inmates of the hospital; whereas here the legal estate is confessedly in the corporation.

[BRETT, J. Does *Heath* v. *Haynes* (*d*) go the length of deciding that no vote can be claimed in respect of the property of a corporation aggregate, although the claimant has exclusive occupation of a specific part of the property, and the circumstances are such that the corporation have no right to shift him from it?]

It does not appear from that case very clearly whether a member of the corporation could, or could not, have been shifted from his rooms. Assuming, however, that he could, it is contended that he could equally be shifted

(*a*) *Ante*, p. 204; *S. C.*, *L. R.* 4 *C. P.* 529.

(*b*) 1 *Lutw.* 168; *S. C.*, 7 *M. & G.* 50; 8 *Scott's N. R.* 814.

(*c*) *Hopw. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 36.

(*d*) *K. & G.* 99; *S. C.*, 3 *C. B. N. S.* 889.

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here. The knights are to observe the rules, orders, and regulations set forth in the charter and such further rules, orders, and regulations as the King shall make for their government. What is there to prevent the Crown making a rule here, which shall regulate the change of houses among the occupants? Moreover, the charter contains a number of minute rules and restrictions wholly incompatible with the idea of an estate in the knights, either legal or equitable. As to this, *Freeman* v. *Gainsford* (*a*) and *Heartley* v. *Banks* (*b*), where similar restrictions existed, are in point. In *Freeman* v. *Gainsford* (*a*), *Erle*, C.J., said:—"It is clear that he" (the claimant) "is appointed as a mere object of charity, having no estate properly so called—that is to say, no estate which he could enforce; but we were pressed with the argument that each member had such a *status* given him by the governors on his appointment as amounted to giving him estate, at least an equitable estate, vested in him in the rooms or chambers, and which he could enforce by bill in equity; but we think it is quite impossible that he could file a bill for the recovery of these rights." So in *Heartley* v. *Banks* (*b*) (the case of the Military Knights of *Windsor*), *Cockburn*, C.J., said:—"The legal estate is plainly in the Dean and Canons of *Windsor*, and though they may be bound to allow the knights to occupy these houses, yet it appears that the Dean and Canons have power to impose such restrictions on the enjoyment as divest the occupation of the character of ownership." In the character of the knights' occupation that case closely resembled the present.

(*a*) *K. & G.* 448; *S. C.*, 11 *C. B., N. S.* 68.

(*b*) *K. & G.* 219; *S. C.*, 5 *C. B., N. S.* 40.

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Matthews, Q.C., for the respondent. This is the case of a borough, not a county franchise, and there is, therefore, no necessity to show any estate, legal or equitable, in the respondent. All that is necessary is that he should be within 30 & 31 Vict. c. 102, s. 3, an "inhabitant occupier as owner or tenant." And first, who is *in fact* the occupier here? Clearly the respondent, and not the corporation. No doubt just as a landlord may occupy by his servants or lodgers, so also a corporation may occupy constructively by its members. But as a question of fact, is that so here? The house, the subject of occupation, is separate and distinct; the respondent in exclusive possession of it; he does the repairs and pays the rates. How, then, can the theory of constructive occupation by the corporation be here set up? It is said, no doubt, that to confer the vote the occupation must be "as owner or tenant." That is so. But an occupancy may well be "as owner or tenant," although there is no estate, legal or equitable, in the occupier. The claimant of a borough vote might have a flaw in his title deeds, or be a mere trespasser, nevertheless, if during the requisite period he occupies as one claiming to be owner or tenant, that occupation confers on him the borough franchise. Occupation fails to qualify where it is precarious; such as the occupation of servants, or something still weaker, such as that of licensees, or paupers in almshouses liable to be arbitrarily moved from one set of apartments to another. Sect. 6 of the 30 & 31 Vict. c. 102, fortifies the meaning now put on the words "occupier as owner or tenant." That section uses the same words in conferring the county franchise, conferring it on the "occupier as owner or tenant" when the land is of the value of £12. Proof cannot there be

requisite that the occupier has estate in the land to the value of £12, for under the previous section, if he has estate in the land to the value of £5, that is sufficient for the franchise. A vendee, let into possession under an agreement of purchase, so long as his ownership remains inchoate and imperfect, has no right to the franchise in a county; *aliter* in a borough, if his occupation has been undisturbed for the required period. *Rogers on Elections* (*a*). In the 8th edition of that treatise, p. 150, with reference to corporations generally, it is said, "It is difficult to understand the principle upon which individuals, who are members of corporations aggregate, are disabled from voting in right of the interest they possess as members of a corporate body. The disability cannot arise out of the tenure by which they hold, because such would also apply to corporations sole; nor can any valid objection be found in the circumstance that they do not hold their interest in severalty, because such would also exclude joint tenants, tenants in common and coparceners." It may be admitted, however, that the authorities establish that the members of a corporation aggregate cannot, simply *qud* corporators, vote in respect of their interest in the property of the corporation. *Middlesex case* (*b*), *Heath* v. *Haynes* (*c*). So no doubt where, as in *Acland* v. *Lewis* (*d*) and *Bulmer* v. *Norris* (*e*), the estate is in the corporation, and the individual members have simply an interest in the profits when ascertained, it is well established that the individual

(*a*) 10th ed., p. 50, note (*c*).
(*b*) 2 *Peckw.* 113.
(*c*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.
(*d*) *K. & G.* 334; *S. C.*, 9 *C. B., N. S.* 32.
(*e*) *K. & G.* 321; *S. C.*, 9 *C. B., N. S.* 19.

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members have no right to a vote. That principle, however, is not peculiar to corporations, but the law is precisely the same, whether the holder of land be a corporator or not. Thus, in *Bennett* v. *Blain* (*a*) (the case of an unincorporated company possessing land), the test applied was whether the deed of settlement conferred on the individual members an estate or interest in the land, and not merely an interest in the profits or a probable interest in the land on a final division of property. But upon the question whether in equity a trust estate has been created, it can make no difference whether the legal fee is in trustees or in a corporation. For example, would the question whether or not the Inns of Court were incorporated affect the franchise rights of members in respect of their various interests (freehold and otherwise) in their chambers? It may be those are cases of tenure, but here also it may be said there is a demise in fact.

[BOVILL, C.J. Suppose the case of a college, and rooms allotted to the Fellows?]

No doubt the mere fact of occupation is not enough if it be precarious or at the arbitrary will of others, but when, as here appears from the finding of the Revising Barrister, the occupation is of a permanent character, that is sufficient for the vote.

[BRETT, J. Does not *Heath* v. *Haynes* (*b*), which was the case of a borough vote, decide this question against you?]

(*a*) *Hopw. & Ph.* 35; *S. C.*, 15 *C. B., N. S.* 518.

(*b*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

In *Heath* v. *Haynes* (*a*) the occupation was in many respects precarious, the occupant was liable to be shifted from one set of apartments to another, and the repairs were effected, and taxes paid by the corporation. Moreover, in that case the argument turned on the question whether the claimant was a "tenant," rather than whether he had acquired an equitable estate, the ownership being confessedly in the corporation.

[BRETT, J. How comes it that you can produce no case where the franchise has ever been allowed to a member of a corporation in respect of the corporate property ?]

The possibility of it being acquired has never, it is submitted, been disputed. In *Davis* v. *Waddington* (*b*), the question whether there was an equitable estate in the individual corporator as distinct from the legal fee in the corporation underwent discussion, but the decision was upon another ground. If there be anything in law which precludes the creation of such an estate in the individual corporator, the whole discussion which there took place would have been unnecessary. Legally speaking, there seems no objection to a corporation creating an estate in an individual member, if its constitution and the rules governing it be not thereby contravened. But suppose an express trust created by a corporation under circumstances amounting to a breach of trust, until it was set aside by information or otherwise, the *cestui que trust* in actual occupation would be entitled to the borough franchise. Here, although there

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

(*b*) 1 *Lutw.* 159; *S. C.*, 7 *M. & G.* 37; 8 *Scott's N. R.* 807.

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is no express declaration of trust, there is a distinct act of the corporation.

[BOVILL, C.J. Do you argue that the respondent could not be shifted from one house to another?]

Not without the making of a rule. And the power to make rules is vested by the charter not in the corporation, but in the King.

[KEATING, J. The respondent is stated in this case to have chosen his house "with the *consent* of the Governor."]

It is submitted that until the making of a rule to authorise it, the respondent could not be shifted, and that the occupation meanwhile confers the vote. In *Beeson* v. *Burton* (*a*) the land was held subject to a similar power, yet the Court upheld the vote even in the case of the county franchise. There by a private inclosure Act, certain allotments of land belonging to the resident freemen of the borough of *Leicester* were vested in deputies elected by the freemen, in trust for them. The deputies had power to dispose of the whole or any part of these allotments, freed and discharged from right of the freemen, upon obtaining the consent of the major part of the freemen assembled in public meeting for that purpose, but subject to this power the freemen obtaining possession of allotments were entitled to hold them so long as they were willing to hold them, and paid the annual rent and conformed to the orders and regulations

(*a*) 2 *Lutw.* 225; *S. C.*, 12 *C. B.* 647.

to be made from time to time by the deputies; and it was held, that the allottees had estates of freehold qualifying them to vote for Members of Parliament, as their estate might continue for life, and was not determinable at the mere will of the deputies.

[WILLES, J., cited *Co. Litt.* 4 *a* "And albeit land, &c."]

That passage would support an argument that within the limits there mentioned there might be a vote in respect of a moveable fee, so that the respondent would on that principle have a vote even if he were liable to be shifted from one house to another. Here, however, it is not necessary to argue that, since until a rule is made for the express purpose the respondent cannot be shifted. What distinction can be drawn on principle between *Beeson* v. *Burton* (*a*), where the legal estate was in the deputies, and the equitable in the individual freeman; and the present, where the legal estate is in the corporation, and the equitable in the individual corporator?

[BOVILL, C.J., referred to the judgment of *Erle*, C.J., in *Roberts* v. *Percival* (*b*), as drawing the distinction that members of a corporation aggregate are not qualified to vote, because the interest in the property is vested in the corporation.]

Those observations are plainly to be restricted to the particular interests there considered.

(*a*) 2 *Lutw.* 225; *S. C.*, 12 *C. B.* 647.

(*b*) *Hop. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 36.

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[BOVILL, C.J. Still the bedesmen held for life, and *Erle*, C.J., must evidently have had that in mind.]

The *dictum* of *Erle*, C.J., was not, it is submitted, necessary to the decision of the case.

[BRETT, J. How do you distinguish *Heartley* v. *Banks* (*a*) ?]

The difference is shown by *M. Smith*, J., in *Fryer* v. *Bodenham* (*b*), where he says, "In *Heartley* v. *Banks* (*a*) it did not appear that the knights had the occupation of specific rooms definitely assigned to them, but only lodgings which might be shifted from time to time, and, therefore, they had not a freehold interest." Moreover, in *Heartley* v. *Banks* (*a*) the military knights were restrained from letting their houses without consent. He referred also to *Freeman* v. *Gainsford* (*c*), *Baxter* v. *Newman* (*d*), and *Bligh* v. *Brent* (*e*).

James, Q.C., in reply. The respondent's argument, if successful, would in effect abrogate the rule that a member of a corporation aggregate cannot vote in respect of the corporate property—a rule just as applicable to the borough as it is to the county franchise. In *Heywood on County Elections*, p. 115, it is said, "With regard to corporations aggregate, I do not find that the individual members of which they are composed have ever been permitted to vote for the estates of the

(*a*) *K. & G.* 219 ; *S. C.*, 5 *C. B., N. S.* 40.

(*b*) *Ante*, p. 204 ; *S. C.*, *L. R.* 4 *C. P.* 5.

(*c*) *K. & G.* 448 ; *S. C.*, 11 *C. B., N. S.* 68.

(*d*) 1 *Lutw.* 287 ; *S. C.*, *nomine Baxter* v. *Brown*, 7 *M. & G.* 198 ; 8 *Scott's N. R.* 1019.

(*e*) 2 *You. & Col. Exch. Eq.* 268.

corporation, even though enjoyed by them in severalty by agreement among themselves." *Heywood* proceeds to cite from 1 *Journ.* 798, the case of the county of *Cambridge* *May* 28, 1624, where Mr. *Glanville* made the report of the Committee; and the House agreed with the Committee in resolving, "upon question that members of colleges, halls, or corporations, not having freehold, save in right of their colleges, halls, or corporations, ought not to have voice in elections of knights and burgesses." And upon a second question, "that fellows and scholars, that have fellowships and chambers above 40*s.*, ought not to have voice in elections." The argument on the other side is substantially the same as that which was unsuccessful in *Heath* v. *Haynes* (*a*), a case quite undistinguishable from the present. In *Beeson* v. *Burton* (*b*) there was an express creation by Act of Parliament of a trust for the division of the land into allotments to be allotted among the freemen; whereas here there is no express trust with reference to the particular houses. Moreover, in that case the occupation was by the occupant as an individual, while here it is simply as member of a corporation. It is not, indeed, disputed that individual members of a corporation *may* have a distinct estate, but the creation of such an estate in themselves as distinct from the estate in the corporation must be clearly shown, and the *onus probandi* is on them. And here nothing of the kind is made out. The circumstance of the houses being separately occupied is simply matter of convenience. He referred also to *Male on Elections*, 268, and *Acland* v. *Lewis* (*c*).

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B.*, *N. S.* 389.

(*b*) 2 *Lutw.* 225; *S. C.*, 12 *C. B.*, *N. S.* 647.

(*c*) *K. & G.* 334; *S. C.*, 9 *C. B.*, *N. S.* 32.

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BOVILL, C.J. The question in this case is whether the respondent was entitled to a vote for the borough of *New Windsor*, as a person in the occupation of a dwelling-house, and the answer to it turns entirely on whether he occupied it either as owner or as tenant. Before the Revising Barrister the contention for the respondent was that this was a case within *Fryer* v. *Bodenham* (*a*), where one of the servitors of *Lord Coningsby's Hospital* was held entitled to a vote; and also within the principle of *Simpson* v. *Wilkinson* (*b*) and *Roberts* v. *Percival* (*c*), decisions relating to the bedesmen of *Lord Burleigh's Hospital*. For the appellant, it was contended that the case was governed by *Heath* v. *Haynes* (*d*).

As regards the cases relied on by the respondent, it is to be observed that neither the servitors in the one case, nor the bedesmen in the other, were members of a corporate body. In each case there was, or it was so assumed, an independent body of trustees, holding in trust in the one case for the servitors, in the other for the bedesmen; and the decision went upon the facts stated, or on the express finding of the Revising Barrister. The present case, on the other hand, is the case of a corporation aggregate, of which corporation the respondent is a member. The corporation is in the nature of a collegiate establishment, of an eleemosynary character, and its corporate property is held by it in trust for the purposes of the corporation, and for the benefit of the members as a corporate body. For con-

(*a*) *Ante*, p. 204; *S. C.*, *L. R.* 4 *C. P.* 529.

(*b*) 1 *Lutw.* 168; *S. C.*, 7 *M. & G.* 50; 8 *Scott's N. R.* 814.

(*c*) *Hopw. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 86.

(*d*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

venience, the original constitution contemplated one house in which the whole body should reside. But the land having been purchased, the hospital was established in its present form; and, in accordance with the general object and intent of the incorporation and charter, rooms, separated so as to constitute different buildings, were assigned to the different members of the corporation. But the object of that assignment of rooms appears to me to have been simply the more convenient occupation and enjoyment of its property by the corporation itself, the corporation distributing the enjoyment among its individual members, so as to carry out with more convenience the purposes and object for which the body was incorporated. No instance has been brought before us in which the individual members of a corporation aggregate, occupying the property of the corporation, have been held entitled to vote in respect of it; and there are a series of resolutions of the House of Commons as well as decisions of Parliamentary Committees and of this Court from the earliest to the latest times, as authorities against such a proposition. It is true that in some of the cases this point was not before the Court for its decision, but throughout the cases the general principle is clearly recognised. And though it is also true that some of the cases were cases of a county vote, yet, inasmuch as the occupation which confers the borough franchise must be an occupation "as owner or tenant," the general principle must have some application.

In the earlier cases, such as those relating to Deans and Chapters, the ground on which the vote was disallowed was, that the subject of occupation was part of the estate of the corporation, and that it was enjoyed

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in severalty by mere agreement; and some of the later cases are similar in effect. The latest case directly in point is *Heath* v. *Haynes* (*a*), the case of the *Earl of Leicester's Hospital* at *Warwick*. There, as here, the brethren were incorporated, and each brother had, as here, the exclusive occupation of a separate residence, but it was held that the brethren were not entitled to vote. And the ground of decision there was, that the ownership was in the corporation, and not in the individual members of it, the Court considering that the individual members did not occupy either as owners or tenants, and that the occupation was by the corporation, in the persons of its individual members, and not by the individual members. That was a clear and distinct decision in a case closely resembling and not distinguishable from the present. Again, in the case of *Roberts* v. *Percival* (*b*), decided in the year 1864, with reference to the bedesmen of *Lord Burleigh's Hospital*, the same view of the law was distinctly taken. *Simpson* v. *Wilkinson* (*c*) had decided, in the year 1844, that the bedesmen were entitled to vote. In 1864, certain additional facts having been brought before the Revising Barrister, it was objected to the vote that (assuming the legal origin of the foundation) if the claimants had any estate, it was only as members of a corporation aggregate; and that the claimants had no freehold interest. *Erle*, C.J., in giving judgment, said, "This Court were then" (referring to *Simpson* v. *Wilkinson* (*c*) "of opinion that the inmates of *Burleigh Hospital* had a freehold interest in the rooms assigned to them; and I now

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

(*b*) *Hopw. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 36.

(*c*) 1 *Lutw.* 168; *S. C.*, 7 *M. & G.* 50; 8 *Scott's N. R.* 814.

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entertain the same opinion. The origin of the hospital was unknown, and we held that the Revising Barrister was warranted in inferring from the ordinances and the statute 39 *Eliz.*, c. 5 (referring to a former statute of 35 *Eliz.*, c. 7), that it had been founded by Lord *Burleigh*, under license from the Crown, and endowed with a grant of lands to trustees or feoffees in trust for the use of the bedesmen. It seems to me that the interest of the inmates under such an endowment, if it stood there, would have been an equitable freehold in the property, the legal estate being in the trustees, just as, if incorporated under the 39 *Eliz.*, c. 5, the legal estate would be vested in the corporation, except that in that case, *the members of the corporation would acquire no right to vote. The difference consists in this: Members of a corporation aggregate are not qualified to vote, because the interest in the property is vested in the corporation;* and that is the way in which by far the larger portion of these hospitals are endowed. But, if the lands are conveyed to feoffees in trust for the members, the legal estate would be in the feoffees, and the equitable interest would be in the members of the institution according to the terms of the deed. Where the deed is lost, the terms of it would be to be presumed from the manner in which the property had been enjoyed" (*a*). And further on: "There is, therefore, ground for inferring that the legal estate was originally in the feoffees; but there was abundant evidence from the mode of user to authorise the Court in holding that each of the bedesmen took a separate equitable freehold in the room assigned to him, the rest of the beneficial

(*a*) 18 *C. B., N. S.* 43.

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interest in the property of the hospital being in the warden and bedesmen."

The present case contains, no doubt, a statement by the Revising Barrister, in the following terms :—

" In the year 1867 the respondent was appointed by royal warrant to supply a vacancy, and by virtue of that appointment, he went into occupation of a vacant house in the college, which he chose with the consent of the Governor. This is the house which he now occupies, and he holds it for his life, subject to his being expelled or removed for any of the causes above stated."

If that statement had stood alone, and the charter containing the original constitution of the establishment had not been before us, we might perhaps have been compelled to come to a different conclusion. But if it had been intended to tie us down by that statement, it would have been quite unnecessary to set out the charter. The charter being set out, and all the facts submitted for our judgment, I have come to the conclusion upon them that the respondent's occupation was merely as a member of the corporation, and that he had not in him any independent estate or occupation otherwise than as such member. The case cannot be distinguished from *Heartley* v. *Banks* (*a*) or *Heath* v. *Haynes* (*b*)—cases of which the authority is distinctly confirmed by the observations which I have quoted of *Erle*, C.J., in *Roberts* v. *Percival* (*c*). There is, moreover, a total absence of authority that a member of a corporation enjoying rights such as the respondent does here,

(*a*) *K. & G.* 219 ; *S. C.*, 5 *C. B., N. S.* 40.

(*b*) *K. & G.* 99 ; *S. C.*, 3 *C. B., N. S.* 389.

(*c*) *Hopw. & Ph.* 121 ; *S. C.*, 18 *C. B., N. S.* 3.

has ever been entitled to, or has ever exercised the right to vote.

It was argued, indeed, by Mr. *Matthews*, that we ought to regard the fee as vested in the corporation in trust for the individual members, and that the individual members have a right independent of the corporation. Putting it so, however, the case can hardly be stronger than one where the fee is vested in an independent body of trustees acting under trusts which are known, and where the character of the occupation depends on the nature of the known trusts and regulations under which the occupation exists. Now, wherever these trusts and regulations have been known, and have been like the present, the Court has disallowed the vote, seeming in such cases to have considered that there was no such occupation "as owner or tenant" as would confer the vote. The case of the bedesmen, and that of the servitors, were not cases where the trusts were known, but where they were inferred from the facts, the Court holding that there was sufficient ground for the inference that the fee was so vested in trust for the persons occupying as to give them equitable estates for life. Without going through the authorities, I will refer to one or two as throwing light on the character of the occupation in eleemosynary institutions like that before us; since their eleemosynary character—though not of itself operating as a disqualification—forms nevertheless a necessary ingredient for the consideration of the Court when determining the character of the occupation, and whether or not it be an occupation as owner or tenant. In *Freeman* v. *Gainsford* (*a*), a deci-

(*a*) *K. & G.* 448; *S. C.*, 11 *C. B., N. S.* 68.

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sion relating to *Lord Shrewsbury's Hospital* at *Sheffield*, it was held that, under the constitution of that hospital, the appointing a member and assigning him chambers for his residence, did not create in him any estate or property in such chambers, but that he was elected as a mere object of charity. And in the judgment of *Williams*, J., there is a very clear exposition of the character of the occupation: "The occupier of a residence, as part of the benefits of a charitable institution, is not entitled to an estate of freehold therein, unless the founder has expressly assigned it to him directly or indirectly during his life. Mr. *Hannen*, on behalf of the respondent, has contended that there is such a direction here. I cannot, however, adopt his construction. He relies upon the first provision of the statutes or constitutions of the hospital, which states that the governor and each of the other inmates shall enjoy their rooms for their lives, together with such stipend and allowances as thereafter limited. I assume that there is sufficient to show that the plaintiff would have a freehold interest in the rooms allotted to him if he had *any* property in them. But the question is whether he had any property. I am of opinion that he has none. The language of the constitutions simply is that the accommodation provided for the recipients of the charity shall be regulated in a certain way. They are to take for their lives, subject to removal for any of the offences specified. But it does not, therefore, follow that the particular rooms are to be assigned to each of them as owner for his life. It seems to me to be clear that he has not the right of an equitable owner at all. If he had, although the purposes of the charity might require him to be removed to another set of rooms, he

might set the governor at defiance. It is quite manifest that no such state of things as that could have been intended. It is simply the case of a number of persons placed on a charitable foundation, who, by the regulations of the charity, are entitled to be properly and reasonably accommodated with chambers to live in, and other allowances. Having a right to be so supplied does not constitute them equitable owners of the rooms in which they are placed." Now, although the above observations had reference to a case where the vote in question was a county vote, yet the principle on which the character of the occupation is there defined is precisely applicable here, and shows that the respondent is not entitled to claim either as owner or tenant. On this point, *Bridgwater* v. *Durant* (*a*) (the case of the lay clerk), and *Hall* v. *Lewis* (*b*) (the case of the six preachers of *Canterbury Cathedral*) may be also referred to. In *Heartley* v. *Banks* (*c*), it was held that the military knights of *Windsor* (who were not a corporation) were not entitled to vote in respect of houses of which the legal estate was in the Dean and Canons of *Windsor*, but which the knights occupied. The houses were in that case assigned to the knights, and they had the exclusive occupation of them, but it was held that the institution was a charity, and nothing more, and that the houses being assigned to the knights subject to a number of minute regulations and restrictions, the knights did not, under the circumstances of that case, acquire any interest in their houses, or occupy them as owners or tenants, but simply as recipients of royal

(*a*) *K. & G.* 377; *S. C.*, 11 *C. B., N. S.* 7.
(*b*) *K. & G.* 499; *S. C.*, 11 *C. B., N. S.* 114.
(*c*) *K. & G.* 219; *S. C.*, 5 *C. B., N. S.* 40.

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bounty. I think the grounds of that decision apply to determine the character of the occupation here quite apart from the other ground taken in argument that the naval knights cannot vote for what they occupy as members of a corporation. There is nothing in the case before us to show the existence of any estate or property in the individual members of this corporation. The corporation are the owners in fee simple. The members are bound to live in a collegiate manner, and are removable if they give occasion for scandal, and for other causes. They acquire individually no estate or property in their houses, and occupy, not as owners or tenants, but as constituent members of the corporate body. *Heath* v. *Haynes* is in point, and the occupation is precisely similar to that of the military knight of *Windsor* in *Heartley* v. *Banks*. It is an occupation by the corporation as owners, not by the members either as owners or tenants. As in the case of almshouses or undergraduates at a university (where there is an assignment of rooms and exclusive occupation for a period), so here no estate or property exists in the knights, but the whole is subject to the control of a governing and superior body. The members are subject to rules and orders precisely similar to those in the cases cited for the appellant—an element, as I have said, for our consideration; they have no equitable estate for life, and do not occupy either as owners or tenants. The decision of the Revising Barrister must therefore be reversed.

WILLES, J. I am of the same opinion. Bearing in mind the plain principle, upon which Mr. *James* has founded his argument, *viz.*, that a corporation aggregate

has no vote, the conclusion against the vote is inevitable. It is true, indeed, as argued by Mr. *Matthews*, that a member of a corporate body *may* have a distinct estate, or that a tenure *may* exist between a corporate body and an individual member. But before we can hold that state of things to be established, we must be satisfied either that a distinct estate has been created by some means known to the law, or that some tenure, recognised as such by the law, really exists. If we were to strain facts to fit in with some similitude of an estate or tenure, we might very possibly find that we were enabling corporations to do indirectly, what the law does not allow them to do directly—*viz.*, to vote through their members. It is not our duty to do that. We must look at the facts, remembering that *primâ facie*, in the case of the property of a corporation aggregate occupied by its members, the ownership is in the corporation, and that it is not divided or distributed so as to vest severally in the individuals who at any given time may happen to enjoy some particular portion of the property. So far as to ownership. Then as to tenure: we must remember that, *primâ facie*, so long as the individual corporator is occupying and enjoying only in fulfilment of the purposes for which the corporation aggregate was created, the occupation is by the corporation itself through the individual, and not by the individual as tenant to the corporation. Apply these principles to the facts which the respondent relies on to show (as he has the burden of doing) that there exists in himself some distinct ownership or tenure. The paragraph he relies on is as follows:—

"In the year 1867 the respondent was appointed by royal warrant to supply a vacancy, and, by virtue of that

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appointment, he went into occupation of a vacant house in the college which he chose with the consent of the governor. This is the house which he now occupies, and he holds it for his life, subject to his being removed or expelled for any of the causes above stated."

On that statement he founds his claim—a claim not founded on occupation as tenant—which indeed would be useless, as there is no tenure in fact—but on occupation as equitable owner for life. And if the statement in that paragraph had stood alone, I am disposed to agree that the respondent holding the house, as therein stated, for life, subject to good behaviour, in the particulars referred to in the charter, would have a sufficient estate. The case, however, does not rest there. The Revising Barrister has set out, and it is necessary for us to consider, the circumstances which have led him to that conclusion. In the year 1724 the testator, *Samuel Travers*, left by will certain property. The recipients I will not deal with as persons receiving alms, but, for the purpose of my judgment, will exclude that consideration. Though far from thinking that the eleemosynary character of an institution has no bearing on questions of this kind, I think that each of these gentlemen has the fullest right to all the benefits supplied by what I would style the generosity, rather than the charity of the founder. The will gives certain property, which the knights are entitled to share among them; it provides for a common habitation, a collegiate manner of living, and a common table. For some time no house seems to have been built; but in 1793, the matter having come before the Court of Chancery, an order was made declaring that the purchase of certain ground for a habitation for the knights, and the erection

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of new buildings thereon, would be a proper execution of the trusts of the will; and in the year 1798, in accordance with a wish expressed in the will, the knights were incorporated by charter. The charter ordained (among other things) that the knights "should live together in a collegiate manner, in the house or building to be erected for their residence, and keep their table together in their common hall." Nothing can be more distinct than the language both of will and charter to show the intention that the enjoyment should be of a collegiate character, and that it should be an enjoyment by all by distribution, and not by each of a share—an enjoyment not of the *singuli* but of the *universitas*. What then is the result of this? My opinion (which I have written down to put the matter clearly before my mind) is this:—I think the knights have no such exclusive or permanent right in or to the houses as to constitute a several property or occupation any more than if besides using a common hall they had used a common dormitory. The system of appropriation is not of strict right, only for convenience, founded on usage, not amounting to a prescription, but only to an habitual mode of enjoying the corporate property without a transfer of ownership or the creation of a tenancy. As to ownership, that remains in the corporation; as to tenure, each of the knights has his residence by allotment or consent of the master, which is not a mode of creating a tenancy, and does not make the knight a tenant in any sense, either legal or popular. He occupies, it is true, a certain residence, which it is usual and decent to allow him to occupy during good behaviour, but he does not occupy either as owner or tenant. The decision of the Revising Barrister must be reversed.

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KEATING, J. I am of the same opinion. The claimant occupies simply and solely, as member of a corporation, a part of the buildings which the corporation hold for the purposes specified in their charter. Mr. *Matthews'* industry has been unable to furnish any case (and I will therefore assume that none exists) in which a member of a corporation has, under such circumstances, been held entitled to a vote. The contrary principle has long been recognised. It has been applied to county votes, and extended by resolution of the House of Commons to burgesses. And, lastly, there is an express decision of this Court in *Heath* v. *Haynes* (*a*) which all Mr. *Matthews'* ingenuity could not satisfactorily distinguish. No doubt he pointed out some minute differences, but he did not establish any substantial distinction; and without overruling *Heath* v. *Haynes* (*a*) it would be impossible for us to uphold the vote. Upon the grounds stated by my brother *Willes*, and also by my Lord, I agree that the decision of the Revising Barrister should be reversed.

BRETT, J. I am of the same opinion, and upon the ground that the claimant was occupying simply as member of a corporation aggregate, and not in the character of an owner or tenant. That alone is sufficient to decide the case. But I think further that the claimant was not entitled, because his occupation was subject to the active powers of management and discretionary control of trustees, and on that ground also was not an occupation as owner or tenant. The case is precisely similar to *Heath* v. *Haynes* (*a*) and *Heartley* v. *Banks* (*b*),

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

(*b*) *K. & G.* 219; *S. C.*, 5 *C. B. N. S.* 40.

neither of which has been impeached, much less overruled. In *Heath* v. *Haynes* (*a*) (which was the case of a corporation) the brethren were held not entitled, because they did not occupy as owners or tenants, but the corporation occupied in the persons of its members. And *Cockburn*, C.J., in giving judgment, said that "if any individual member of the body was improperly interfered with in his occupation, his *only* remedy would be by an application to the Court of Chancery, to have the charity administered according to the will of the founder." *Heartley* v. *Banks* (*b*) was not the case of a corporation, but of a charitable institution, the trustees of which were considered to have such power of imposing restrictions on the enjoyment as to divest it of the character of ownership. *Cockburn*, C.J., in delivering the considered judgment of the Court said, "We are of opinion that the characteristics of ownership are wanting; that the occupation is only subordinate to the purposes of a charity, and subject to the immediate control of the superiors of the institution; and that it is not therefore an occupation as "owners" so as to satisfy the requirement of the 27th section of the Reform Act." *Freeman* v. *Gainsford* (*c*) was a similar decision as to a county vote and was said by *Erle*, C.J., to fall within the principle of *Heartley* v. *Banks* (*b*), the occupation being subordinate to the general objects and purposes of the charity, so as to prevent the acquisition of a freehold interest. In *Simpson* v. *Wilkinson* (*d*) and *Roberts* v. *Percival* (*e*), the vote was no doubt upheld, the Court considering

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B. N. S.* 389.

(*b*) *K. & G.* 219; *S. C.*, 5 *C. B., N. S.* 40.

(*c*) *K. & G.* 448; *S. C.*, 11 *C. B., N. S.* 68.

(*d*) 1 *Lutw.* 168; *S. C.*, 7 *M. & G.* 50; 8 *Scott's N. R.* 314.

(*e*) *Hopw. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 36.

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that the Revising Barrister was warranted in presuming for the hospital a legal foundation, not investing the claimants with a corporate character, and in consequently allowing the vote. But in *Roberts* v. *Percival* (*a*), *Erle*, C.J., expressly pointed out the distinction involved. "The members of a corporation aggregate are not qualified to vote, because their interest in the property is vested in the corporation. And that is the way in which the larger portion of these hospitals are endowed. But if the lands are conveyed to feoffees in trust for the members, the legal estate would be in the feoffees, and the equitable estate in the members of the institution according to the terms of the deed." Lastly, as regards *Fryer* v. *Bodenham* (*b*), it is plain from the language used by the judges that they did not there intend to overrule previous decisions; but in dealing with the case before them they say that it is within *Simpson* v. *Wilkinson* (*c*), and *Roberts* v. *Percival* (*a*), and not within *Heartley* v. *Banks* (*d*). *Heath* v. *Haynes* (*e*) and *Heartley* v. *Banks* (*d*) have never been overruled, and we ought not to overrule them, except on the clearest grounds. They are in point, and the decision of the Revising Barrister should therefore be reversed.

Decision reversed.

Solicitors—For Appellant, *T. Durant*, agent for *B. C. Durant, Windsor.*

For Respondent, *Taylor & Son*, agents for *C. T. Phillips, Windsor.*

(*a*) *Hopw. & Ph.* 121; *S. C.*, 18 *C. B., N. S.* 36.

(*b*) *Ante*, p. 204; *S. C.*, *L. R.* 4 *C. P.* 529.

(*c*) 1 *Lutw.* 168; *S. C.*, 7 *M. & G.* 50; 8 *Scott's N. R.* 314.

(*d*) *K. & G.* 219; *S. C.*, 5 *C. B., N. S.* 40.

(*e*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

FORD, Appellant; HARINGTON, Respondent.

Nov. 23.

A., a canon of *Exeter*, claimed to vote for the residence house "belonging to him in respect of his canonry." The dean and five canons are a corporation aggregate. The canons are appointed for life, and are entitled to occupy five houses, which they repair themselves, and with their enjoyment of which the chapter as a body cannot interfere. At the election of a canon he produces the key of his predecessor's house, and prays to be admitted. As canon he is elected, and decreed to be installed, and thereupon takes possession. The senior canon may, however, intervene, and choose the vacant house:—*Held*, that the above facts rebutted the inference that *A.'s* occupation was simply as member of a corporation aggregate, his occupation being presumably in the character of a corporation sole.

THIS was an appeal from the Revising Barrister for the city of *Exeter*.

The case stated as follows:—At a Court held on the 21st day of *October*, 1869, *Brutton John Ford* duly objected to the name of The Reverend *Edward Charles Harington* being retained upon the list of persons entitled to vote in the election of members for the said city, as well in respect of his ownership of a freehold house situate in the precinct of the close within the said city as of his occupation of the same house.

The name of the said *Edward Charles Harington* appeared upon the freeholders' and occupiers' lists respectively as follows:—

Harington, The Revd. Edward Charles	*The Close, Exeter*	Freehold house	*The Close*

Harington, The Revd. Edward Charles	*The Close, Exeter*	House	*The Close*

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The facts proved were these:—

The Reverend *Edward Charles Harington* is one of the canons residentiary of the Cathedral Church of *St. Peter* in *Exeter*, and his qualifying property is the residentiary house belonging to him in respect of his canonry.

The Dean and Chapter of the said cathedral are a corporation aggregate, consisting of the dean and five residentiary canons, and sixteen non-residentiary prebendaries.

There are five canons who are appointed for life, and five houses which the canons are entitled to occupy, and with their enjoyment of which the Chapter as a body cannot interfere.

At the election of a canon he produces the key of the house occupied by his predecessor, and prays to be admitted.

As one of the canons he is elected and decreed to be installed, and thereupon takes possession of his house. No evidence was produced to show how he gets the key.

The senior canon has the right of occupying the vacant house if he chooses, and that right has been exercised. Each canon must reside three months. Each canon repairs his house outside and in, at his own expense. At one time there were more canons and houses than there are now. For some years two of the canons, Canon *Martin* and Canon *Butt* occupied the same house during their respective residences. The canonical residences on the suppression of the canonries were let, and the rents paid into the common fund of the Chapter. The present canons have occupied the houses in which they are now living ever since their appointments.

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The questions were :—

1. Whether the said *Edward Charles Harington* was entitled to such an estate or interest of freehold in his said residentiary house as entitled him to vote.

2. Whether he occupied the same house as owner or tenant.

The Revising Barrister decided both questions in the affirmative, and retained the name of the said *Edward Charles Harington* both on the freeholders' and occupiers' list.

If the Court was of opinion that the first question was wrongly decided, the name of the said *Edward Charles Harington* was to be expunged from the freeholders' list, and if of opinion that the second question was wrongly decided his name was to be expunged from the occupiers' list.

Kingdon, Q.C., for the appellant, submitted that the case fell within *Heath* v. *Haynes* (*a*) and the recent decision in *Durant* v. *Kennett* (*b*).

Phillpotts, for the respondent. The cases of *Heath* v. *Haynes* (*a*) and *Durant* v. *Kennett* (*b*) are distinguishable, since the respondent does not occupy his residentiary house as a member of the chapter, but in his own right as having a distinct estate therein as a corporation sole. That is virtually involved in what the Revising Barrister has expressly found; *viz.*, that the residentiary house belongs to the respondent "in respect of his canonry," and that the Chapter as a body cannot interfere with his enjoyment. Practically that finding

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

(*b*) *Ante*, p. 279; *S. C.*, *L. R.* 5 *C. P.* 262.

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disposes of the case, since upon the only legal question that it seems possible to raise, *viz.*, whether a canon or prebendary (for the terms are convertible—see *Randolph* v. *Milman, per Bramwell*, B. (*a*)) may, for the purpose of holding his residentiary house, be a corporation sole, the books of authority seem conclusive. In *Com. Dig.* Tit. "Ecclesiastical Persons" (C. 3), it is distinctly laid down that "though the Dean and Chapter make a corporation, yet the dean and every prebendary of the chapter may be a corporation by himself (*b*). So the dean may have belonging to his deanery a church, prebend, or other possessions" (*c*). More recently in *Gleaves* v. *Parfitt* (*d*), we find in the judgment of *Erle*, C.J., as a proposition conceded to be law, that rectors, vicars, and *prebendaries* are corporations sole. Further proof, if wanted, is to be found in the undoubted right of suit and corresponding liability of a prebendary for dilapidations of the prebendal house—a right and liability founded upon the principle of succession. *Dr. Sand's case* (*e*). *Radcliffe* v. *D'Oyly* (*f*). And in *Gleaves* v. *Parfitt* (*d*) that principle was extended to the case of a vicar-choral, *Erle*, C.J., saying, in delivering judgment, that "there is a corporate succession in the holding as it passes from one corporator to another; but each corporator holds in severalty." *Erle*, C.J., was indeed further of opinion, that even if the vicar-choral was not strictly a corporation sole, he still had such a sole right in the house as to create the liability; but it does not appear that the other learned judges acquiesced in that view. The form of the writ *De sine assensu Capituli* for a

(*a*) *L. R.* 4 *C. P.* 111, 112.
(*b*) 10 *Co.* 31 b.
(*c*) *Dy.* 273 a.
(*d*) 7 *C. B., N. S.* 838.
(*e*) *Skin.* 121.
(*f*) 2 *T. R.* 630.

prebendary in *Fitzherbert's Natura Brevium*, p. 194, is also strongly for the respondent, for it shows that proceedings to recover a residence house from a tenant of a predecessor, who had demised without the license of the Dean and Chapter, were taken in the name of the prebendary claiming in right of his prebend. The circumstance that on the suppression of certain of the canonries, the canonical residences were let, and the rents paid into the common fund of the Chapter raises no presumption adverse to the respondent, since the 3 & 4 *Vict.* c. 113, s. 58 (*a*), under which that was done, does not touch the respondent's case. On the other hand, sect. 59 (*b*) furnishes the respondent with an argument; for in authorising him to charge his canonry for the improvement of his residence house, it impliedly recognises his separate property therein. Reliance will no doubt be placed by the other side on *The Middlesex case* (*c*), a decision of a parliamentary committee with reference to a prebendary of *Westminster*, who was held in that case not entitled to vote for his prebendal house.

(*a*) The 3 & 4 *Vict.* c. 113, s. 58, enacts: "So soon as conveniently may be, measures shall be taken by the deans and chapters of the several cathedral and collegiate churches, for the disposal of such residence houses now under their control, and houses attached to any dignity, office, or prebend, in the precincts of the respective cathedral and collegiate churches as may no longer be required, in such way as they shall deem fit, according to plans to be from time to time prepared by the respective chapters, and when approved by the visitors be submitted to the Ecclesiastical Commissioners for *England*, and may be confirmed by the authority hereinafter provided."

(*b*) The 3 & 4 *Vict.* c. 113, s. 59, enacts: "It shall be lawful for the said commissioners to authorise any dean or canon of any cathedral church to raise moneys on his deanery or canonry for the purpose of building, enlarging, or otherwise improving the residence house thereof, on such terms and conditions as the said commissioners, with the concurrence of the bishop and the chapter, shall approve."

(*c*) 2 *Peckw.* 113.

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That case is, however, clearly distinguishable from the present in its facts, since not only were the prebendal houses there repaired from a common fund, but the committee appear to have come to the conclusion from the facts before them that the prebendaries enjoyed in severalty merely by agreement among themselves. Moreover, in *Whithorn* v. *Thomas* (*a*), *Tindal*, C.J., said that the decisions of committees, though they might be used in argument for the reasoning they contain, could not be received as authorities by the Court.

[KEATING, J. That must mean as *binding* authorities.

BRETT, J. Unless they are clearly wrong I apprehend we should not overrule them.

WILLES, J. Looking at the note in *Peckwell* (*b*), the question in each case would seem to be whether the circumstances show the property to be held in severalty.]

The facts stated in the case sufficiently show it here. The respondent cannot be interfered with in the enjoyment of his house. Moreover, he occupies his house for the performance of his spiritual duties, such as preaching—a duty which the corporation aggregate cannot perform. His duties as member of the Chapter, viz., to advise the bishop and consent to his grants—*Dean and Chapter of Norwich's case* (*c*)—do not require a house. The respondent occupies the house, in fact, and, it is submitted, as a corporation sole, whereas the

(*a*) 1 *Lutw.* 127; *S. C.*, 7 *M. & G.* 1.

(*b*) 2 *Peckw.* 113 (note).

(*c*) 3 *Rep.* 75 b.

corporation aggregate does not, in fact, occupy, and, it is submitted, cannot. That the Dean and Chapter cannot succeed upon a death is clear, for a Dean and Chapter cannot have predecessor nor successor. *The case of Sutton's Hospital* (*a*).

Kingdon, Q.C., in reply. It is not denied that a prebendary *may* hold property as a corporation sole, and have a distinct estate in it; but the question in each case is whether the circumstances show that he has such an estate, and with sufficient distinctness. Now, on the authority of *Durant* v. *Kennett* (*b*), the *primâ facie* presumption is that the respondent occupies simply as a member of the corporation aggregate; and there is nothing in the statements of this case to rebut that *primâ facie* presumption. That the respondent holds, as has been asserted, as a corporation sole, certainly appears nowhere. To make that out, however, the statement that "the qualifying property is the house belonging to him in respect of his canonry" has been relied on; but that does not advance the case, since he may have the house in respect of his canonry, because, as canon, he is a member of the Chapter. Then as to the non-interference of the Chapter with his enjoyment, and his duty to repair. All this may be the result of a bye-law, to make which would clearly be within the competency of the Dean and Chapter (*c*).

[BRETT, J. How do you distinguish the cases with reference to dilapidations?]

(*a*) 10 *Rep.* 32 b.

(*b*) *Ante*, p. 297; *S. C.*, *L. R.* 5 *C. P.* 262.

(*c*) *Cripps' Laws of the Church and Clergy*, 5th ed., p. 118.

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In *Gleaves* v. *Parfitt* (*a*) there was a collation by the bishop which *Erle*, C.J., treats as equivalent to a conveyance. He says expressly, "that the vicar-choral takes nothing by being a member of the corporation without collation from the bishop; after collation he holds in severalty, &c." Here there is neither a conveyance shown, nor yet installation, or admission. All that the case states is that the canon produces the key and prays to be admitted. That in itself is a strong circumstance to show that the estate is in the Dean and Chapter. And the payment of the rents of canonical residences, as stated in the case, into the common fund of the Chapter, points in the same direction.

[KEATING, J. Suppose the Dean and Chapter made a grant to one of the canons for life?]

That perhaps might confer an estate sufficient to give the vote.

[KEATING, J. Then do the facts here stated not amount to something tantamount?]

Facts that would be sufficient evidence of an estate for life conferring the franchise where a man is not a member of a corporation, have frequently been held to have no such effect where he is. The right of the senior canon to step in upon a vacancy, and himself take the vacant house, is inconsistent with the view that it is attached to a particular canonry. Looking to

(*a*) 7 *C. B., N. S.* 838

the fluctuating condition of the property the only consistent view, as is submitted, is that the general property is in the Dean and Chapter, and that the individual members' enjoyment is simply that of the corporation. As to the spiritual duties of a canon, such as preaching, rendering a house necessary for their performance, a house is no more necessary for them, than for his other duties as member of the Chapter.

[WILLES, J., referred to the form of the writ *De sine assensu Capituli*, given in *Fitzherbert's Natura Brevium* (*a*), for the recovery of a messuage in the name of a prebendary.]

No doubt it is matter of history that houses and estates were frequently annexed to prebends; it being a common practice in ancient times to make such endowments. And in such cases no doubt the action would be rightly brought in the name of the prebendary. But that is quite distinct from the case of a residence house, which cannot be regarded as annexed to the prebend, and to which the precedent in *Fitzherbert* does not, it is submitted, at all apply. He also referred to 3 & 4 Vict. c. 113, s. 50.

BOVILL, C.J. The respondent in this case as a member of the Dean and Chapter of Exeter is a member of a corporation aggregate, and if the residentiary house which he occupies were occupied by him simply in that capacity, it is clear he would not be entitled to vote in respect of it. The case would then be precisely within

(*a*) 9th ed. p. 194.

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Heath v. *Haynes* (*a*), and our recent decision in *Durant* v. *Kennett* (*b*). In these two cases upon the facts presented to it, the Court came to the conclusion that the brethren in the one case, and the Naval Knights in the other, occupied only as members of the corporation aggregate of which they respectively formed part. In the present case the respondent has two capacities; one as member of a corporation aggregate, the other, in respect of his office of Canon; and, as such canon, there is no doubt that he is a corporation sole. In *Burn's Ecclesiastical Law* (*c*), the law as to the possessions of Deans and Chapters is thus laid down:—"The possessions of the Dean and Chapter are for the most part divided; the Dean having one part alone in right of his deanery, and each particular prebendary a certain part in right of their prebends; the residue the Dean and Chapter have alike; and each of them is to this purpose incorporate by himself. For a prebendary who hath a distinct estate, and hath also a vote in the Chapter, is a *corporation sole* in respect of the one, and at the same time is a member of a *corporation aggregate* in respect of the other." In the present case the respondent has the separate possession of, and separate rights in respect of, his house. He has also separate liabilities in respect of it. Upon his death, if the house be dilapidated, his personal representatives will be liable to an action at the suit of his successor for dilapidations. *Dr. Sand's case* (*d*); *Radcliffe* v. *D'Oyly* (*e*): a doctrine extended to the representative of a vicar-choral in *Gleaves* v. *Parfitt* (*f*).

(*a*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.
(*b*) *Ante*, p. 297; *S. C.*, *L. R.* 5 *C. P.* 262.
(*c*) 9th ed., vol. 2, p. 90.
(*d*) *Skin.* 121.
(*e*) 2 *T. R.* 630.
(*f*) 7 *C. B., N. S.* 838.

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Further, it has been held on high authority in the case of a prebendary possessed in right of his prebend of an advowson, that upon his death while the church is vacant his executors are entitled to present. *Rennell* v. *The Bishop of Lincoln* (*a*), *Mirehouse* v. *Rennell* (*b*). In *Burn's Ecclesiastical Law* (*c*), there is the following passage :—"Dr. *Godolphin* saith that after the death of a prebendary, the Dean and Chapter shall have the profits. But by the statute of the 28 Hen. 8, c. 11, the profits of a prebend during the vacation shall go to the successor towards the payment of his *first fruits*. In order to reconcile which, perhaps, the distinction may be this: that the issues of those possessions, which he hath in common with the rest of the Chapter, shall after his death be divided among the surviving members of the Chapter; but the profits of those possessions, which he hath in his separate capacity as a sole corporation of himself, shall be and inure to his successor." The form of the writ *De sine assensu Capituli*, applicable to a prebendary, in *Fitzherbert's Natura Brevium* (*d*), tends strongly to confirm the view that the prebendary takes in right of his office, and as his separate property (*e*).

(*a*) 7 *B. & C.* 113.

(*b*) 8 *Bing.* 490.

(*c*) 9th ed., vol. 2, pp. 91, 92.

(*d*) 9th ed., p. 194.

(*e*) For a case of ejectment for a residence house, in which the facts showed the property in the Dean and Chapter, see *Doe dem. Butcher* v. *Musgrave*, 1 *M. & G.* 625. In that case, the canon having mortgaged his canonry and all lands, messuages, &c., belonging thereto, the mortgagee brought ejectment (*inter alia*) for the residence house. The evidence showed that there was no property attached to any individual canonry, but that the whole belonged to the Dean and Chapter; that all the canons had houses assigned to them for their residence, but that no particular house was appropriated to any one canonry; and that whenever a vacancy occurred the canons had a right of choice of the vacant house according to their seniority, and that the house which was left

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From the above authorities it is clear that a canon is for many purposes considered in law to hold in severalty, and the only question is whether the respondent does in this case so hold his residentiary house. Upon the statements of the Revising Barrister I have come to the conclusion that he does, and that he holds it in his own right as canon, and not as a member of the corporation aggregate. The case finds that the residentiary house belongs to him "in respect of his canonry; and that with the enjoyment of the house the Chapter, as a body, cannot interfere." No doubt there is an old case, *The Middlesex case* (*a*), in which a prebendary of the Cathedral of *Westminster* was held not entitled to vote in respect of his prebendal house. However, in *Elliott on Qualifications and Registrations*, I find the following: "With respect to Chapters, where the dean and each prebendary has a certain separate portion in right of their offices, each is a corporation sole, and may vote; but where the whole annual income is divided among them as a corporation aggregate they cannot vote;" and for that position *Heywood on County Elections* (*b*) is cited. Now in *The Middlesex case* (*a*) the objection

after the other canons had made their selection was assigned to the new canon. Upon this evidence, the action was held not maintainable, *Tindal*, C.J., saying that the evidence showed that the house was not annexed to the canonry, but that the defendant merely had the use of it for the purposes of residence. See also *Grant on Corporations*, p. 593, and the cases there cited in a note, in which the learned author remarks on the above case, that "if the house had been appropriated in severalty to the canon, *semble* ejectment might have been brought for it."

(*a*) 2 *Peckw.* 113.

(*b*) 2nd ed., p. 125. The passage in *Heywood*, p. 125, is as follows: "Questions may arise as to the right of the deans and chapters of cathedrals to vote for the lands belonging to their churches. In general, the dean has one part of the annual income in right of his deanery, and each prebend a certain portion also in right of his prebend;

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which seems to have prevailed was, that the Dean and Chapter enjoyed in severalty by mere agreement among themselves, and that under these circumstances (their houses also being repaired from a common fund) the estate was in the corporation aggregate. The report is short, and the circumstances are not set out, but if the facts were such as to support the objection that the Dean and Chapter enjoyed in severalty merely by agreement among themselves, the decision of the committee is intelligible. I think the present case falls within the principle referred to by Mr. *Elliott*, that, where the prebendary has a distinct estate in right of his office, he is a corporation sole, and may vote. Here the Dean and Chapter cannot, as a body, occupy the respondent's house. They cannot as a body interfere with his occupation of it as canon, or transfer the house during his life. The respondent, on the other hand, is in exclusive occupation, and cannot be interfered with by any one. In my judgment he occupies in his own right as canon, and as a corporation sole, and not as a member of the corporation aggregate; and I am of opinion that he has a freehold office for life. Even if the legal estate be in

the residue is divided equally among the dean and prebendaries; so that the dean and each prebendary is a corporation sole, as having a distinct estate, while in respect of his vote in the chapter he is a member of a corporation aggregate. Where such a division of the profits of their estate as that just stated takes place, the dean and prebendaries, as corporations sole, have votes for knights of the shire; *thus the prebendaries of Westminster always vote at the elections in Middlesex, &c.*"

The above passage occurs in the 2nd edition of Serjeant *Heywood's* work, published in 1812, and it is certainly remarkable that he should make no mention of the *Middlesex case*, 2 *Peckw.* 113, decided in 1804, in which the committee had, in the case of the Rev. *W. Bell*, a prebendary of *Westminster*, disallowed the vote. See also *Orme on Election Laws*, 2nd edition, p. 147.

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the Dean and Chapter, the respondent has still an equitable freehold. It is enough that he has a freehold for life, with all the rights attaching to it, and among others the right to vote. The decision of the Revising Barrister must be affirmed.

WILLES, J. I am of the same opinion. To the law recently laid down in *Durant* v. *Kennett* (*a*) (the case of the Naval Knights of *Windsor*) I fully adhere. I think, as is there laid down, that where a member of a corporation aggregate is in enjoyment or occupation of a part of the corporate property in fulfilment of the purposes for which the corporation was formed, his enjoyment or occupation is *primâ facie* that of the corporation, and that the property remains in the corporate body. I think it would be straining the law to say that, because an individual member is under such circumstances allowed to occupy for his life unless he does something to induce the corporation to turn him out, he has therefore a distinct estate. In my judgment it is a refinement to say, as Mr. *Philpotts* has done, that a corporation aggregate is incapable of occupying. Corporations, in the absence of a lease under seal, have, in more cases than one, been held liable for use and occupation (*b*). But although the *primâ facie* presumption is as I have stated it, it is nevertheless open to an individual member to rebut that presumption by showing a distinct estate in himself; and in *Durant* v. *Kennett* (*a*) the question which we discussed was, whether on the facts of that case enough appeared to rebut the presumption. To rebut it here is equally competent to

(*a*) *Ante*, p. 297.

(*b*) See *Woodfall's Landlord and Tenant*, 9th ed., p. 718, and the cases there cited.

the respondent, by showing a separate estate in himself. The question is, has he done so? The findings of the Revising Barrister are precise, and upon them it appears that the house was taken by the respondent in succession to a predecessor, and that he has it in respect of his canonry; he being at the same time as canon a member of the corporation aggregate. In the case of an ordinary corporation with the character of which we should not have that special acquaintance, which, as lawyers, we necessarily have with that of a Dean and Chapter, I should have thought (seeing that the law knows only certain persons as corporations sole) that the case ought to have gone back for the Revising Barrister to state how he arrived at his conclusion, so as to show that he was not by some mere assumption enabling the claimant to acquire the franchise as a corporation sole, where, in his individual capacity, he could not have acquired it. But with the knowledge we possess, as lawyers, of the constitution of Deans and Chapters, when we find a member of such a body in the enjoyment of separate property, as here, to the exclusion of the other members, we at once recognise a probability that he holds it as a corporation sole, and not merely as a member of the corporation; and of its having been assigned to him not as in *Durant* v. *Kennett* (a) simply for convenience founded on a usage not amounting to prescription, but as something which belongs to him as his separate property in right of his prebend.

In *Com. Dig.* tit. "Ecclesiastical Persons" under the heading "(C. 3) Dean and Chapter," it is said, "Though

(a) *Ante*, p. 297; *S. C.*, *L. R.* 5 *C. P.* 262.

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the Dean and Chapter make a corporation, yet the dean, and every prebendary of the Chapter, may be a corporation by himself (*a*).

"So the Dean may have belonging to his deanery, a church, prebend, or other possessions" (*b*).

Then under the heading "(C. 4) Prebendary:" "A prebend is *Jus Spirituale percipiendi Proventus in Ecclesiâ, competentes percipienti ex divino Officio cui insistit.*"

"A canon is he, *qui est electus in Fratrem*, and has a Stall *in Choro, et locum in Capitulo.*

"A Prebend is derived out of a Canonry, &c.

"But if a Prebendary aliens his whole Possession, he continues prebendary; for he has his Stall in the Choir and his Voice in the Chapter" (for which position 3 *Co.* 75 b. is cited, and fully bears out the authority of *Comyns*).

"If he demises his prebend, the Prebendary shall do the things proper to his function and not the Lessee."

It is clear, therefore, on authority, that a prebendary is capable of taking property as a corporation sole, and that the right claimed by the respondent is one which may and probably does exist. To set out the title of the Dean and Chapter would very possibly have been inconvenient, if not necessary to establish the right. I see no reason for doubting the Revising Barrister's finding, or for not taking the finding literally. No question, indeed, could have arisen if, instead of a residentiary house, the case had been that of a living attached to a prebend.

For the appellant much stress was laid on the fact

(*a*) 10 Co. 31 b. (*b*) *Dy.* 273 a.

that before the canon is admitted, leave is asked of the Dean and Chapter. But that circumstance has not much weight with me. Formerly, when the bishop dealt with the temporalities of his see, the consent of the Dean and Chapter was necessary.—*Dean and Chapter of Norwich's case* (*a*). But all doubt is removed by the form of the writ *De sine assensu Capituli* in the case of a prebendary whose predecessor had demised without license, and the tenant held over. The form of the writ is evidence of the law, and shows that the law did not regard the right as in the Dean and Chapter, but as a separate right in the prebendary in respect of his prebend.

As regards the *Middlesex case* (*b*) the Chapter there was lately formed, and no prescription appears to have been relied on; and whether the decision was right or wrong, it is explained upon the principle there adverted to, that members of a corporation holding a share of the corporate property by agreement among themselves, acquire no right to vote in respect of it. That constitutes the distinction from the present case, in which, looking to the authority of *Coke* and of *Fitzherbert's* precedent, I think a presumption arises that the respondent has a separate property in his residential house. Even without authority I should have thought that was so, just as it would be in the case of a living attached to a prebend. I may add that, when we decided *Gleaves* v. *Parfitt* (*c*), I felt there would be difficulty in applying the custom with reference to dilapidations to a case where there is no succession, and I still feel that difficulty, and think that an additional reason for the view

(*a*) 3 *Rep.* 75 b.
(*b*) 2 *Peckw.* 113.
(*c*) 7 *C. B., N. S.* 838.

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that the prebendary takes in succession in right of his prebend. I think the decision of the Revising Barrister was right, and that it should be affirmed.

KEATING, J. I am of the same opinion, and I think our decision in no way clashes with *Durant* v. *Kennett* (*a*). No doubt where a member of a corporation aggregate occupies corporate property for the purposes for which the corporation was formed, the *primâ facie* presumption is that he occupies only as such member, and it is for him to show that he occupies in his own right, and not merely as such member. Is, then, that presumption rebutted here? I think the statements of the Revising Barrister amply rebut it; and I quite agree in the reasons given by my brother *Willes* and my Lord.

BRETT, J. I entertained some doubts at first whether the case was sufficiently stated, but, reading it with the knowledge we possess of the law relating to Cathedral Chapters, the result I come to is, that the respondent as canon was entitled to be elected to a house, and that upon election he had by virtue of his canonry such a freehold interest in the house as entitled him to the franchise. I am glad to find that the older authorities in *Peckwell* (*b*) fully bear out the case of *Heath* v. *Haynes* (*c*), and our recent decision in *Durant* v. *Kennett* (*a*). In all those cases the respondent occupied only as a member of the corporation aggregate; while

(*a*) *Ante*, p. 297; *S. C.*, *L. R.* 5 *C. P.* 262.

(*b*) *The Middlesex case*, 2 *Peckw.* 113; *The Gloucester case*, referred to at 2 *Peckw.* 99, 113 (note).

(*c*) *K. & G.* 99; *S. C.*, 3 *C. B., N. S.* 389.

here he occupies as a corporation sole, and holds the house as his separate property. 1869.

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Decision affirmed.

Attorneys—For Appellant, *J. Elliott Fox.*
For Respondent, *E. Philbrick*, agent for *Sanders, Brock, & Barnes.*

KIRTON, Appellant; DEAR, Respondent.

Nov. 23.

The incumbent of a district church was, as such, entitled—

(1.) To the freehold of the church (not found by the Revising Barrister to be of any annual value);

(2.) To two sums of 150*l.* and 50*l.* paid annually under Orders in Council by the Ecclesiastical Commissioners, and the Governors of Queen Anne's Bounty "to the incumbent for the time being of the said church;"

(3.) To fees for marriages, baptisms, and churchings performed within the church;

(4.) To fees under a local Act in respect of the burial in a cemetery out of the parish, of persons who had died within his district (items (3) and (4) each amounting to more than 40*s.* a year):

Held, that he was not shown to have 40*s.* a year from land within the parish, so as to entitle him to the county franchise; the marriage, &c., fees (though received for ceremonies in part necessarily performed in the church) being payable for the personal services of the incumbent.

AT a Court held before the Revising Barrister for the county of *Middlesex, Charles Kirton* duly claimed to have his name inserted in the list of voters for the said county, and *Frederick Charles Dear* duly objected to the name of *Charles Kirton* being inserted in the said list.

The facts of the case are as follows:—

The said *Charles Kirton* duly claimed in respect of a freehold benefice situate in the polling district of *Bethnal Green*, in the parish of *Saint Matthew, Bethnal Green*, in the said county—such freehold benefice being known or

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designated by the name or title of "*Saint Andrew*," *Bethnal Green.*

It was proved before the Revising Barrister that the said *Charles Kirton* was duly appointed, by license of the Bishop of *London*, dated the 10th day of *June*, 1864, to the office of Perpetual Curate or Incumbent of the Church of the perpetual curacy of *Saint Andrew, Bethnal Green*, in the said county, and he was by the said license authorised to receive and enjoy all and singular stipends, profits, and advantages whatsoever belonging to the said office:

That the district chapelry attached to the said Church of *Saint Andrew* was assigned to the said church by an Order of Her Majesty in Council, dated the 3rd day of *April*, 1843, made on the recommendation of the Church Building Commissioners, and under and by virtue of the several statutes next hereinafter mentioned, that is to say:—The 58 *Geo.* 3, c. 45; the 59 *Geo.* 3, c. 134; the 7 & 8 *Geo.* 4, c. 72; and the 1 *Vict.* c. 75; and which said Order in Council was published in the *London Gazette* of the 20th *June*, 1843:

That by another Order of Her Majesty in Council, dated the 10th day of *June*, 1843, and published in the *London Gazette* of the 16th of *June*, 1843, and made on the recommendation of the Ecclesiastical Commissioners for *England*, and under and by virtue of the statutes next hereinafter mentioned, that is to say:—The 3 & 4 *Vict.* c. 113; and the 4 & 5 *Vict.* c. 39; the annual sum of £150 was ordered to be paid by the said Ecclesiastical Commissioners to the incumbent, for the time being, of the said Church of *St. Andrew, Bethnal Green*, by equal half-yearly payments as therein mentioned:

That by another Order of Her Majesty in Council,

dated the 8th day of *August*, 1853, and published in the *London Gazette* of the 9th day of *August*, 1853, and made on the recommendation of the Ecclesiastical Commissioners for *England*, and under and by virtue of the several statutes next hereinafter mentioned, that is to say:—The 3 & 4 *Vict.* c. 113; and the 2 & 3 *Vict.* c. 49; it was ordered that the annual sum of £50 should be paid to the incumbent of the said Church of *St. Andrew, Bethnal Green*, by the treasurer of the Governors of the Bounty of Queen Anne, out of a sum of £475 charged as therein mentioned on the tithes or payments in lieu thereof, part of the revenues of the rectory of *St. Andrew Undershaft*, within *St. Mary Axe*, in the City of *London*:

That under and by virtue of the hereinbefore mentioned Order in Council of the 3rd day of *April*, 1843, the said *Charles Kirton*, as the incumbent for the time being of the said Church of *St. Andrew, Bethnal Green*, is entitled to and in receipt of the fees paid in respect of marriages, baptisms, and churchings, performed in the said church, and that the income arising from such fees is more than 40*s.* per annum over and above all rents and charges payable out of or in respect of the same:

That the said *Charles Kirton* is in receipt of fees paid in respect of the burials in *Bow* Cemetery of persons dying within the said district attached to the said Church of *St. Andrew*, but no evidence was produced of the right or title of the said *Charles Kirton* to such fees, or of the persons from whom the same were received. The income from such burial fees amounts to more than 40*s.* a year over and above all rents and charges payable out of or in respect of the same:

That no assignment of pew-rents has at any time been

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made to the said *Charles Kirton* under or by virtue of any of the acts in that behalf made and provided, and that the said *Charles Kirton* is not in receipt of any income from pew-rents, or the letting of pews.

The Revising Barrister was of opinion that the said *Charles Kirton* was not in right of his said office of perpetual curate or incumbent of the said Church of the perpetual curacy of *St. Andrew, Bethnal Green* (irrespectively of the source from which the income coming to him in right of his said office was derived), entitled to have his name inserted in the list of voters for the said county, and was also of opinion that the said *Charles Kirton* was not by virtue of his office seised of or entitled either at law or in equity to a freehold estate in lands or tenements in the same parish and in the same county as that for which he claimed to be registered of the clear yearly value of 40*s.* over and above all rents and charges payable out of or in respect of the same.

The Revising Barrister, therefore, disallowed the claim of the said *Charles Kirton* to have his name inserted in the list of voters for the said county.

If the Court were of opinion that this decision was wrong, the register was to be amended by inserting the name of the said *Charles Kirton,* with his place of abode and the particulars of his qualification, in the said list.

Sir *John Karslake,* Q.C. (with him, *Morgan Howard*). The appellant is a perpetual curate assigned to the church in question under the Church Building Acts. No question is made as to his being seised in fee of the church itself by reason of his being incumbent.

It appears, too, that under and by virtue of different

Orders in Council he is in receipt of two different sums annually of £150 and £50: and also that he derives an income of more than 40*s.* per annum from fees in respect of marriages, baptisms, and churchings, performed in the church. As incumbent, he is entitled to these fees.

There was no evidence of title to the burial fees before the Revising Barrister, for the Act by which they were receivable was out of print at the time. He, however, finds that the appellant is in receipt of fees paid in respect of the burials in *Bow* Cemetery, of persons dying within the district attached to the church. The Act relating to that cemetery, 4 & 5 *Vict.* c. lxiii, "An Act to establish a general Cemetery for the interment of the Dead in the Parishes of *St. Dunstan's, Stepney,* and *St. Leonard, Bromley,* in the County of *Middlesex,*" does not declare the cemetery to be constructively in the district of the church, but contains clauses providing for the payment to the incumbents of neighbouring parishes and districts of a share of interment fees (*a*). The Revising Barrister finds that he is not seised "in the same parish and in the same county," which, perhaps, must be taken to negative that the cemetery is in his parish, or is declared to be so for any purpose by any Act of Parliament.

There is no question (though it is not expressly so

(*a*) Sec. 176. "The company shall, on the interment of every corpse within the consecrated part of the cemetery, pay to the incumbents of the neighbouring parishes or ecclesiastical district from which such corpse shall have been removed for interment for the time being," &c., "for every corpse interred," &c.; then followed the rates to be charged.

Sec. 181 provided for the keeping of the account of interments, and the names of the parishes, &c., from which the dead should be removed.

Sec. 182 required the company to render the account to each incumbent, &c., half-yearly.

Sec. 183 directed the payment to each incumbent on certain days.

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found) that the church and land in point of value would amount to more than 40*s.*, irrespective of the items of income enumerated.

[*Simon*, Serjt., was not prepared to admit that; it might be that before, and but for, the building of the church, the land might be worth 40*s.* per annum.]

The value of the tenement is the real subject of inquiry.

[KEATING, J. We should expect the Revising Barrister to find the fact of value.]

It may be said he has done so in his general finding and opinion at the end of the case, but that finding may rest on any one of a variety of propositions. For instance:—1st. That the claimant was not seised in fee. 2nd. That he was not seised by virtue of his office. 3rd. That the land was not in the same county. 4th. That the value was insufficient. As to the annual payment under the Orders in Council, the statute 3 & 4 *Vict.* c. 113, and 4 & 5 *Vict.* c. 39, create a common fund from the revenues of certain canonries and other church appointments suspended and kept vacant. It is true it does not appear that any lands in this district were allotted under the Acts to the incumbency. Yet the grants in question are for the incumbent for the time being, and the sums being thereby given in augmentation of the benefice were annexed by force of these terms of the grant in such a sense as made them "profits" issuing out of the benefice so as to confer the qualification to vote. The Revising Barrister, however, seems to have thought that as the income could not be said to come

from land in the parish, it could not be said to be attached to and receivable by reason of the office or incumbency. In this it is contended, for the reasons given, he was wrong.

Next, as to another source of income, *viz.*, fees for marriages, baptisms, &c. By Order in Council, equal in effect to an Act of Parliament, the appellant was endowed with the fees paid in respect of marriages performed within the church. He is entitled to the fees as incumbent. The freehold of the church is in him, and the services are held in the church. It is contended that the marriages in the church producing fees, issue out of the church and land, and fulfil the requirements and words of 8 *Hen.* 6. The marriages must take place in the church, *i.e.*, the edifice itself. Summing up these heads of income, it may be asked whether the land itself, which is evidently worth more than 40*s.*, or the sums settled on the incumbent by Queen Anne's Bounty, or the fees attached to services in the building, his freehold—do not some, or one of them, confer the vote?

As to the burial fees, it maybe added that the 4 & 5 *Vict.* c. lxiii., before referred to, containing the clause requiring it to be noticed as a public Act, is subsequent in date to the Acts which gave power to divide and make new church districts. The statute 58 *Geo.* 3, c. 45, probably the first of the Church Building Acts, by s. 24, "constitutes the districts, parishes for all purposes of ecclesiastical worship and performance of ecclesiastical duties, and as to all marriages, christenings, churchings, and burials," and in relation to all fees, &c.

As to the pew rents, it is true they are not assigned to the appellant, but he can claim to have them so

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assigned. Possibly, that might come within the principle affirmed in *Astbury* v. *Henderson* (*a*). There is a power and possibility of deriving revenue from the land, and it is not necessary, in order to create a qualification, that the land should be actually fruitful. In *Astbury* v. *Henderson*, the owner of land worth £15 a year as building land, had allowed it to be unbuilt on, and though he did not realise 40*s.* a year from it, he was, notwithstanding, held to be entitled to the franchise.

Simon, Serjt. (*Michael* with him). Two propositions seem to be contended for:—1st. That the benefice of itself entitles the appellant; 2nd. If not, that the payments made to him being attached to an office fixed to a church have that effect.

This is not a benefice existing from time immemorial. In former times the lord made grants of land which were called *beneficia*, or benefices, sometimes with services attached to them. In process of time this term was adopted by the church in the case of ecclesiastical livings. The 18 *Geo.* 2, c. 18, especially sect. 5, regulated the qualification of county voters from the date of its passing down to 1832; and for present purposes the Reform Act, 2 & 3 *Will.* 4, c. 45, did not alter the freehold qualification. If the claim be in respect of an office, it is necessary to show that the payment comes out of land. Here it is found, as to a part, at all events, of the payments, that they come out of a common fund not expressly or necessarily connected with the land.

Robinson v. *Ainge* (*b*), shows that the amount must arise from a direct interest in the realty, and that it is

(*a*) *K. & G.* 6; *S. C.*, 15 *C. B.* 251.

(*b*) *Ante*, p. 193, *L. R.* 4 *C. P.* 429.

not sufficient that it be paid out of a mixed fund arising from land and other sources of revenue. That case was one of a qualification founded on sums payable to the claimant by a friendly society out of the property of the society, whose funds consisted of rents of freehold land vested in trustees, and contributions and fines of members. Here, though the common fund may arise, perhaps, from land, that land is vested in trustees, and the appellant has no direct interest in it, even if it were shown to be situate in the county.

The present case closely resembles *Canterbury Cathedral—Hall* v. *Lewis* (*a*), where preachers appointed by the Archbishop of *Canterbury*, holding office during good behaviour, and receiving a stipend of £32 a year out of the Chapter revenues, which were derived wholly or in part from lands and tenements, were held to have no interest in land entitling them to vote.

So, with the case decided by the *Middlesex* Committee (*b*) of a Master and sub-registrar in Chancery, the emoluments of whose offices arose from fees and salary, though houses and premises were attached to the offices.

So also with the case (*c*) before the same committee of an organist appointed for life to a church in *Middlesex*, but paid by an annuity secured on lands in *Surrey*.

In *Bushell* v. *Eastes* (*d*), a parish clerk who received fees on burials in the parish churchyard amounting to more than 40*s*. a year, the actual duties of grave-digging being done by the sexton, who received separate fees, was held not entitled to vote either as a holder of a

(*a*) *K. & G.* 499; *S. C.*, 31 *L. J.*, *C. P.* 45.
(*b*) 2 *Peckw.* 93, 100.
(*c*) 2 *Peckw.* 91.
(*d*) *K. & G.* 484.

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freehold office or of a freehold interest in land to the value of 40*s.* a year.

In *Astbury* v. *Henderson* (*a*), the decision was based on the fact that the present value was in fact more than 40*s.*

In *Stephens' Laws of the Clergy* (*b*) it is said "No fee is due to the clergyman of common right for performing the marriage ceremony." He quotes a canon of Archbishop *Langton*, "we do firmly enjoin that no sacrament of the church," applying of course to baptism, "shall be denied to any one upon the account of any sum of money."

Burdeaux v. *Dr. Lancaster* (*c*) shows that no fees at all are due for christening or burying unless by custom, and then the incumbent claiming must have actually done the duty.

In *Patten* v. *Castleman* (*d*), the claim of a vicar for a fee on the wedding of one of his parishioners in the church of another parish was rejected, and the rule of law stated to be that where no service is done no fee can be demanded.

It is plain the fee was only demandable in respect of *personal* service, and not connected with the church or edifice.

In *Naylor* v. *Scott* (*e*) the Vicar of *Wakefield* unsuccessfully attempted to set up a title to churching fees where the service had not been performed.

So in *Topsall* v. *Ferrers* (*f*), a custom set up by the parson of *St. Botolph's Without Aldersgate*, to demand fees in respect of his parishioners buried elsewhere, was held void.

(*a*) *K. & G.* 6; *S. C.*, 15 *C. B.* 251.
(*b*) Vol. i. p. 758.
(*c*) 1 *Salk.* 332.
(*d*) 1 *Sir Geo. Lee's Cas.* 387.
(*e*) 2 *Ld. Raym.* 1558.
(*f*) *Hobart*, 175.

[BRETT, J. The cases as to marriages before Lord *Hardwicke's* Act would scarcely apply, as marriages then might take place almost anywhere, but since that statute the ceremony must be performed in a church (*a*). If the marriage be in the church, does not the incumbent receive the fee though he do not perform the ceremony ?]

Perhaps so in practice, but by agreement merely.

In *Spry* v. *Gallop* (*b*), the Rector of *St. Marylebone* claimed burial fees in respect of paupers buried in the cemetery. The service was not performed by the rector, or his curates. He was unsuccessful, as he failed to prove the custom he set up, and he had no authority for it under any Act of Parliament.

[BRETT, J. The amount under the Bow Cemetery Act seems to be paid to the incumbent, *because* the deceased is not buried in the parish ?]

That affords another argument that for this purpose the cemetery is not in the parish.

Karslake, in reply. As regards the payments under the Cemetery Act, though it is not found that the cemetery is within the parish, yet by special legislation the fees are attached to the office in substitution for those which would have been earned if paramount considerations of public health had not prevailed. It was not intended that the incumbent should be in a worse position.

The case finds that the incumbent is entitled to and

(*a*) 26 *Geo.* 2, c. 33, s. 8. See now 4 *Geo.* 4, c. 76.

(*b*) 16 *L. J., Ex.* 218.

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in receipt of the fees paid in respect of marriages, baptisms, and churchings performed in the said church, and the annual income is more than 40*s.*

The marriage services must be performed in the church.

BOVILL, C.J. It is not disputed that Mr. *Kirton*, as incumbent of the Church of *St. Andrew, Bethnal Green*, has a freehold office, and is entitled to the freehold of the church and of the land on which the church stands. In that capacity he is also entitled to certain emoluments—that is to say, under Orders in Council he is to receive £150 a year from the Ecclesiastical Commissioners, and a further sum of £50 a year from the Governors of Queen Anne's Bounty. Besides these, as incumbent, he is entitled to certain fees for baptisms, marriages, and churchings performed in the church, and as incumbent he is also entitled, under the Act of Parliament establishing the cemetery at *Bow*, to certain payments on the interment of corpses removed from his district.

All these separate emoluments accrue to him in his character of incumbent, and by virtue of the office he possesses. But we are asked to hold not only that he enjoys these emoluments in right of his office, but that he derives them, or some of them, from land, and that, too, land within the parish. With regard to the church itself, the case does not find that it has any value for letting, or that it produces any income. No assignment of pew rents has been made, and no income accrues from either church or land, unless the marriage, &c., fees, to be noticed presently, can be so regarded.

As to the stipends from the Ecclesiastical Commis-

sioners and the Governors of Queen Anne's Bounty. They are derived from common funds, created by Acts of Parliament, and in no sense can be said to be derived from land within the parish and county to which the incumbent is entitled. Similar reasoning is applicable to the fees in respect of burials in the cemetery. The only part of the claim as to which the appellant had a chance of success, was that relating to the fees for marriages, baptisms, and churchings performed in the church.

But, then, can it be said that these fees in any way arise from the land, or that the land in respect of them becomes of the required 40*s.* annual value? I think not. The fees are paid when services are performed, and have no connection with the land. The right to them depends either on immemorial custom or Act of Parliament. They do not arise from either the use or ownership of land, but are received for the personal services performed in the church on the occasion of ceremonies, some of which, it is true, must by law take place in the church.

On these grounds I think that the appellant has not been shown to derive any income from land within the parish, and that the decision of the Revising Barrister was right.

WILLES, J., not having heard all the arguments, gave no judgment.

KEATING, J. I also think that the Revising Barrister was right. The only point that has or could have been seriously insisted on in support of the claim, is that as the incumbent is entitled to fees on marriages, baptisms, and churchings, performed within the church, and the

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appellant has by virtue of his office a freehold in the church, the fees enhance the value of the church sufficiently for the purpose of the franchise.

But I think that my brother *Simon* has ascribed to these fees their proper character. They are not payable of common right. Whatever evidence may have been considered sufficient to support proceedings in regard to them in the Ecclesiastical Courts, a court of common law would not enforce such fees unless the right to them were founded on immemorial custom or Act of Parliament. This was very clearly laid down in the case of *Bryant* v. *Foot* (*a*). That case decides that when the fee claimed is so large that it could not possibly have been paid in the reign of *Richard* 1, it cannot be founded on immemorial custom, and as it was not there claimed by Act of Parliament, it was disallowed altogether. I agree that the fee is paid only for services performed, irrespectively of land or of the place where the ceremony is performed.

It is true the Act of Parliament (*b*) requires that marriages should in the *ordinary way* take place in the church; but that fact does not in my opinion cause the fee or payment to issue out of land. I am therefore of opinion that the appellant has failed to show that he has free land or tenement to the annual value of 40*s.* within the parish and county.

BRETT, J. As I understand this case, the question is not whether the appellant has a freehold within the parish, but, assuming that he has one, is it of the annual value of 40*s.*? I think that the Revising Barrister has

(*a*) *L. R.* 2 *Q. B.* 161; *S. C.*, *Ex. Ch.*, *L. R.* 3 *Q. B.* 497.

(*b*) 4 *Geo.* 4, c. 76, repealing 26 *Geo.* 2, c. 33, Lord *Hardwicke's* Act.

made a right estimate of the value of the church. As to the two stipends payable to the incumbent—the one by the Ecclesiastical Commissioners, the other by the Governors of Queen Anne's Bounty—I may say that, even if those sums do arise from land, it is not land within the parish.

So, as to the cemetery fees, even if we were to hold that they are payable in respect of the use of the cemetery, the cemetery is not within the parish.

The only point that could be at all relied on to support the claim, depends on the fees for marriages, baptisms, and churchings, which take place within the church of which the appellant has the freehold. But the cases cited clearly show that before Lord *Hardwicke's* Act (*a*) these fees were paid in respect only of personal services, and consequently it could not before then have been even contended that they were payable in respect of the use of the church.

The question then arises whether, in consequence of that and the later Act requiring that some of these ceremonies should take place within the church, the fees can be said to arise out of the church any more than they did before.

I think not. The payments are claimable by custom for personal services performed, it is true, in the church, but not for the use of the church or building. They cannot, then, be said to add to the value of the land, and the claimant has failed to show himself to be possessed of free land or tenement of the annual value of 40*s.* within the parish. All that can be said of him is

(*a*) 26 *Geo.* 2, c. 33.

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that he has land, and that he performs services on it which bring him in upwards of 40*s.* per annum.

On these grounds I also am of opinion that the decision of the Revising Barrister must be affirmed.

Decision affirmed with costs.

Attorneys—For Appellant, *Marriott, Jordan, & Cooper.*
For Respondent, *William Gardiner.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

HILARY TERM, 1870,

IN THE

THIRTY-THIRD YEAR OF QUEEN VICTORIA.

WALLIS, Appellant; BIRKS, Respondent.

Jan. 26.

A., the incumbent of a vicarage as perpetual curate, claimed to vote in respect of land of the value of 40*s.* per annum, which had been conveyed in exchange to his predecessor "and his successors, vicars of the said vicarage for the time being for ever:—*Held*, that even if *A.* was not as perpetual curate a corporation sole, he had at least a sufficient equitable freehold interest in the land to entitle him to vote for the county.

THIS was an appeal from the decision of the Revising Barrister for the parish of *Burwell*, in the county of *Cambridge*.

The case stated as follows:—At a Court held for the revision of the list of voters for the said parish, *William Wallis* duly objected to the name of the Rev. *Thomas Rawson Birks* being inserted in the list of voters for the said parish.

The Rev. *T. R. Birks*, the respondent, is the incumbent, as the perpetual curate of the parish of the *Holy*

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Trinity, Cambridge. He was licensed upon due presentation thereto on the 5th of *January*, 1866, as appeared by an instrument under the hand and episcopal seal of the Bishop of *Ely*, which authorized him "to receive and enjoy all and singular stipends, profits, and advantages whatsoever belonging to the said office."

He claimed to be on the register of voters in respect of land at *Burwell* of more than the clear annual value of 40*s.*, which was taken in exchange for other land attached to such perpetual curacy.

By a certain indenture of exchange bearing date the 2nd of *September*, 1856, and made between *Thomas Morland* and *Conrad Wilkinson* of the first part, the Right Reverend *Thomas* Lord Bishop of *Ely*, ordinary and patron of the vicarage of the parish of *Holy Trinity*, in the borough of *Cambridge*, of the second part, and the Rev. *Charles Clayton*, clerk, fellow of *Caius College, Cambridge*, incumbent of the said vicarage, of the third part, whereby it was, amongst other things, recited that, by indenture bearing date the 5th of *April*, 1855, and made between *Frederick Randall* of the first part, *William Willson* of the second part, *John Eaden* of the third part, and the said *Thomas Morland* and *Conrad Wilkinson* of the fourth part, and for the valuable considerations therein mentioned, the piece of land situate at *Burwell* aforesaid, hereinafter particularly described, was conveyed and assured to such uses as the said *Thomas Morland* and *Conrad Wilkinson*, or the survivor of them, his executors or administrators should at any time before the expiration of twenty-one years from the death of such survivor by any deed or deeds appoint, and in default thereof, and subject thereto to the use of the said *Thomas Morland* and *Conrad Wil-*

kinson, their heirs and assigns for ever. And it was further recited that by virtue of an Act of 55 *Geo.* 3, c. 147, intituled "An Act for enabling spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater value or more conveniently situate for their residence and occupation, and for annexing such Houses and Lands so taken in exchange to such Benefices or Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain cases; and for other purposes," it was lately agreed between the said *Thomas Morland* and *Conrad Wilkinson*, and the said *Charles Clayton*, that the said *Thomas Morland* and *Conrad Wilkinson* should give to the said *Charles Clayton* and his successors the pieces or parcels of land thereinbefore mentioned and thereinafter particularly described, in exchange for a piece or parcel of land situate in the parish of *St. Andrew the Less, Cambridge*; and it was further recited that the several directions in the recited Act had been complied with, and that in pursuance of the recited Act and the said proceedings taken by virtue thereof, the recited agreement for the said exchange had been and was thereby ratified and confirmed by the Bishop of *Ely* as ordinary and patron, and by *Clayton* as incumbent of the said vicarage. It was thereby witnessed that, in pursuance of the recited agreement, and in consideration of the said piece of land in the said parish of *St. Andrew the Less, Cambridge*, so agreed to be given in exchange, they, the said *Thomas Morland* and *Conrad Wilkinson*, by and with the consent and approbation of the Bishop of *Ely*, as ordinary and patron of the said vicarage, upon the acceptance of *C. Clayton*, as incumbent, by and with the

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consent and approbation of the said ordinary and patron testified as therein mentioned did grant, bargain, sell, and exchange unto the said *C. Clayton*, and his successors vicars of the said vicarage for the time being for ever (*inter alia*), All that piece or parcel of land situate, lying and being in *Burwell* aforesaid, containing by admeasurement 2 acres 1 rood 15 perches, then or late in the occupation of *James Scott*, together with the appurtenances thereto belonging, to hold the same with their appurtenances unto and to the sole use and benefit of the said *C. Clayton* and his successors vicars of the said vicarage of *Holy Trinity* aforesaid, for the time being for ever, in exchange for the said piece or parcel of land and appurtenances situate in the said parish of *St. Andrew the Less, Cambridge.*

No proof was given of any augmentation from Queen Anne's Bounty of such curacy. The following is a copy of the claim :—

Revd. *Thos. Rawson Birks*	7, *Trumpington Road, Cambridge*	Freehold land	*Broad Hedges*

The Revising Barrister decided that such incumbency, being a perpetual curacy, conferred upon the claimant a sufficient freehold estate in the property at *Burwell* (he receiving the rents thereof) to entitle him to a vote in respect thereof; and he allowed his claim accordingly.

If the Court were of opinion that the respondent had a sufficient freehold interest in the said land, his name was to be retained on the register; but if otherwise, then his name was to be erased.

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O'Malley, Q.C., for the appellant. The Revising Barrister has decided "that the incumbency, being a *perpetual curacy*, conferred upon the incumbent a sufficient estate, &c." If he intended by this to describe the incumbent as having capacity to take lands as a corporation sole by succession, the incumbent is certainly not in this sense a perpetual curate. Perpetual curates were made corporations sole by stat. 1 *Geo.* 1, st. 2, c. 10, s. 4, enacting "that all such churches, curacies, or chapels which shall at any time hereafter be augmented by the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, shall be and hereby are declared and established to be from the time of such augmentations, perpetual cures and benefices, and the ministers duly nominated and licensed thereunto, and their successors respectively, shall be and be esteemed in law bodies politic and corporate, and shall have perpetual succession by such name or names as in the grant of such augmentation shall be mentioned, and shall have a legal capacity, and are hereby enabled to take in perpetuity to them and their successors all such lands, &c., as shall be granted unto or purchased for them respectively by the said governors." The want of proof of any augmentation by the Governors of Queen Anne's Bounty, prevents the statute from at all affecting this question. The respondent is merely a stipendiary curate.

Even "a perpetual curacy is not an ecclesiastical benefice, but is tenable with any other benefice" (*a*). "If there be an impropriator and no vicar, but the church hath always been served by a curate appointed

(*a*) 2 *Burn's Ecc. L.*, 9th edit., p. 55, citing *Weldon* v. *Green*, A.D. 1772.

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by the impropriator, he is called a perpetual curate; and yet, according to the common law, he is removable at the pleasure of the impropriator. And in the case of *Price* v. *Pratt*, it was holden *per Cur.* that though a curate called perpetual be appointed either generally or expressly for life, yet such an appointment is in its own nature revocable at law, even without any cause assigned, and by the ecclesiastical law upon cause shown: so that he had not such a permanent interest as to claim any tithes. And in all these cases it was holden that a curate could not claim tithes by the common law; and the several statutes 17 *Car.* 2, c. 3, s. 7; 29 *Car.* 2, c. 1, s. 1, 2; and 1 *Geo.* 1, st. 2, c. 10, s. 4, show the law was so taken by the Legislature; who have by those Acts enabled curates to take in perpetuity in the particular cases provided for by those Acts" (*a*).

In *Greenslade* v. *Darby* (*b*) the legal rights and position of a perpetual curate whose stipend *had* been augmented by the Governors of Queen Anne's Bounty were much discussed.

[WILLES, J., after referring to *Mason* v. *Lambert* (*c*), (where a perpetual curate was held liable to an action on the case for dilapidations at the suit of his successor), added—But surely if you succeed in showing that the perpetual curate not being a corporation sole cannot hold land in that capacity, you still can hardly deny that under the deed in question he had either a legal or equitable freehold for life?]

(*a*) 2 *Burn's Ecc. L.*, 9th edit. p. 55, citing *Noy*, 15, 3 *Keb.* 614, *Bunb.* 273; *S. C.*, 1 *Barnard*, 233.

(*b*) *L. R.* 3 *Q. B.* 421.

(*c*) 12 *Q. B.* 795.

Keane, Q.C., for the respondent, was not called on.

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Per Curiam (*Bovill*, C.J., *Willes* and *Brett*, JJ.). The decision of the Revising Barrister was right, and must be affirmed.

Decision affirmed.

Attorneys—For Appellant, *J. & C. Cole*, for *E. Foster*, *Cambridge*.
For Respondent, *Isaacson*, for *J. Button*, *Newmarket*.

PIERCY, Appellant; MACLEAN, Respondent.

Jan. 21.

"Counting-house" in 2 *Will.* 4, c. 45, s. 27, is to be construed in its ordinary and popular sense, and consequently it is not necessary that a counting-house should be an entire house in order to confer a borough qualification.

THIS was a consolidated appeal from the decision of the Revising Barrister for the city of *London*.

The case stated as follows:—

John Maclean claimed to be inserted in the list of voters for the parish of *St. Katherine Cree Church*, in the city of *London*, in respect of a counting-house situate at and within a house numbered 10, *Billiter Street*, in the said parish.

The counting-house, in respect of which the claim was made, consisted of two rooms, forming, together with the landing of the staircase, the first floor of the house. This house was originally built for a dwelling-house, and in former years had been so occupied. But in common with many similar houses in the city, the use of it as a

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dwelling-house had been abandoned, and the whole of it was let out in separate apartments for business or commercial purposes, and at no time since the 30th of *July*, 1868, had the same or any part thereof been used as a dwelling.

The landlord, who has a lease of the entire house, underlets the ground floor to a person who occupies it as a grocer's shop. The rest of the house is let out in separate holdings to tenants, who occupy them as counting-houses or business offices.

No structural alteration has been made in any part of the house since it was disused as a dwelling-house.

The first floor is let to the claimant as tenant from year to year at a yearly rent of £65, under an agreement that the landlord should thereout pay all the rates on behalf of the claimant in respect of the premises occupied by him, the rent being higher than it would have been if the claimant were personally to pay the rates to the collector.

This floor consists of two rooms communicating together by an internal door, each of which rooms has a separate outer door to the landing of the staircase which gives access to this floor and the floors above. These doors are the same doors as were attached to the rooms when the house was used as a residence. On the outside of one of these outer doors is painted the name of the claimant.

These rooms were occupied and used by him as a counting-house in his trade or business of a wine merchant. He alone, and to the exclusion of the landlord, had the keys of the doors that opened on to the landing.

These rooms were used in manner aforesaid by the claimant and his clerk, during the day-time, and after

the business hours the doors on the landing were locked, and the keys taken away by him or his clerk.

There is an outer door to the house opening on the street which is open during the day; but after business hours this door is closed and secured by a latch lock, of which the claimant has a key.

The claimant was rated to all the rates in manner following:—Against "No. 10, *Billiter Street*," in the rate book, the overseers had placed the claimant's name in the occupiers' column, followed by the words "Counting-house" immediately below the name of the landlord, which was followed by the word "house." The two names were bracketed together, and the rateable value, which exceeded £120, and the rate in the pound, and the rating of the whole house, including therein the said counting-house, was carried out in the appropriate columns of the rate book against these names jointly, but no separate value or rating of the counting-house alone was inserted in the rate book. There had been no special enactments as to rating in force in this parish.

Both the rates and the rent had been duly paid, and all other requisites not herein specifically mentioned to entitle the claimant to be placed on the list of voters in respect of his occupation of the said counting-house were duly proved.

The claim was objected to on the following grounds: 1st. That the tenement in the claimant's occupation was not sufficient in kind to confer a qualification, by reason of there being no such structural severance of the rooms occupied by him as a counting-house from the rest of the house, as to constitute them a "counting-house" within the meaning of the "Reform Act, 2 *Will.* 4, c. 45." 2ndly. That the claimant was not, as such

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occupier as aforesaid, an occupier of premises in respect of which he was legally liable to be rated, on the alleged ground that an occupier of part of a house not structurally severed from the rest of the house is not liable to be rated, and therefore that the placing of his name by the overseers on the rate book in manner aforesaid, was no rating of him in respect of the premises he occupied.

The Revising Barrister disallowed the objections, and inserted the claimant's name on the list of voters in respect of his occupation of the said counting-house:

Holding:—1st, that there was such a conversion, user, and occupation of the said two rooms into and as a counting-house, as to make them a "counting-house" within the meaning of "the Reform Act," and that no further structural severance than appears on the facts, was necessary to make them a good qualification as a counting-house.

2ndly. That the overseers having placed the name of the claimant on the rate book in manner aforesaid, they had thereby so rated him in respect of the premises he occupied, as to entitle him to be placed on the list of voters as duly rated.

3rdly. That the claimant was legally rateable as an occupier in respect of the premises he so occupied as aforesaid, and that such joint rating of him and his landlord as aforesaid, in respect of the whole house, rated him in respect of the premises he exclusively occupied, being part thereof.

The cases of four hundred and seventy other persons who were inserted, or claimed to be inserted in the lists of voters for this and other parishes in the city, were consolidated with the principal case.

The question for the opinion of the Court was, whether or not it was rightly decided that the said respondent and the other persons objected to, were entitled to have their names retained or inserted, as the case might be, in the register of voters for the city of *London*.

Prentice, Q.C., for the appellant. The question turns on the meaning to be assigned to the word "counting-house" in the 2 *Will.* 4, c. 45, s. 27, which confers the borough franchise on the occupier as owner or tenant "of any house, warehouse, counting-house, shop, or other building" of the required value. It is submitted that whenever the vote is claimed, as it is here, for something which forms only part of a house, and which is not structurally severed from the other part, the claim must fail—parts of houses not structurally severed not being within the scope of the enactment. The rule, it is submitted, is the same on this point for a counting-house as it is for a dwelling-house. As to a dwelling-house it has been settled by *Cook* v. *Humber* (*a*). *Cook* v. *Humber* (*a*), overruling upon this point *Toms* v. *Luckett* (*b*), decided that part of a dwelling-house, not structurally severed from the other part, will not qualify either under the word "house," or under the more general description of a "building."

[BOVILL, C.J. Do you apply the same argument to the words "shop" and "warehouse?" If so, what need was there for expressly specifying them in the Act of Parliament, since "house" would have included them?]

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B. N. S.* 33.

(*b*) 2 *Lutw.* 19; *S. C.*, 5 *C. B.*, 23.

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If they had not been expressly specified, it might have been open to contend that the Act applied only to dwelling-houses; but the insertion of the words "warehouse," "counting-house," and "shop," has precluded the possibility of such an argument. The intention of the Legislature seems to have been that an entire house, whether used for the purpose of residence, or for the purpose of trade, should give the franchise, but that part of a house should not. "House" is evidently used as descriptive of a building for residence; "warehouse," "counting-house," "shop," as descriptive of one for commerce. See *per Erle*, C.J., *Cook* v. *Humber* (*a*).

[*F. M. White*, for the respondent, referred to *Daniel* v. *Coulsting* (*b*), where a building being used partly to warehouse goods and partly as a sale room, "house" was held an appropriate description of the entire building.]

There the building was calculated for a dwelling-house, and had been so used. *Downing* v. *Luckett* (*c*), which is a decision as to a counting-house, will probably be relied on by the other side. In that case, no doubt, although the counting-house formed only part of a house, the vote was upheld; but that was before the decision in *Cook* v. *Humber* (*d*), and the only question raised was, whether the occupation was as tenant, and the point of there being no structural severance was not relied on. On the other hand, *Wilson* v. *Roberts* (*e*)

(*a*) *K. & G.* 426; *S. C.*, 11 *C. B., N. S.* 45.

(*b*) 1 *Lutw.* 230; *S. C.*, 7 *M. & G.* 122; 8 *Scott's N. R.* 949.

(*c*) 2 *Lutw.* 33; *S. C.* 5 *C. B.*, 40.

(*d*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*e*) *K. & G.* 430; *S. C.*, 11 *C. B., N. S.* 51.

was subsequent to *Cook* v. *Humber* (*a*), and there it was distinctly held that the occupation of "offices," without actual severance from the rest of the premises, would not confer the borough franchise. "Offices," it is submitted, clearly constitute a "building" analogous to the other buildings previously mentioned in the statute, *viz.*, "shop," "counting-house," "warehouse;" and consequently, if "offices" without structural severance will not confer the franchise, it is difficult to see the principle on which a "counting-house," similarly situated, will do so. Moreover, in practice, it would be absurd if premises such as here described gave a vote to a merchant for a counting-house, while similar premises occupied as "offices" gave no vote to solicitors, architects, surveyors, or auctioneers.

[BOVILL, C.J. I understand you to admit that in the ordinary acceptation of the word, the subject of occupation is in this case a counting-house, and that it is so used. Do you contend, then, that the word "counting-house" is used in some peculiar sense in this Act of Parliament?]

To constitute a "counting-house" within the Act of Parliament there must be structural severance, *Cook* v. *Humber* (*a*). *Smith* v. *Lancaster* (*b*) points to another difficulty. If the landlord resided on the premises, then, on the authority of *Smith* v. *Lancaster* (*b*), he would have a vote for the whole house. It would be singular, if, while the landlord has a vote for the whole house, parts of it let off as "counting-houses" should also

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*b*) *Ante*, p. 287; *S. C.*, *L. R.* 5 *C. P.* 246.

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confer votes on the several occupants. He referred also to *Powell* v. *Boraston* (*a*). Secondly, as to the question of rating, it is admitted there is a difficulty in distinguishing *Wright* v. *The Town Clerk of Stockport* (*b*), which will be relied on by the other side.

F. M. White, for the respondent. First, a counting-house (being expressly mentioned in the Act of Parliament) constitutes a sufficient qualification, although only part of a house, and although not structurally severed from the residue. Secondly, if in the case of a counting-house structural severance be essential to the franchise, it here exists. It is not denied on the other side that the rooms occupied by the respondent are in the ordinary and popular sense of the word a counting-house. And in the Act of Parliament the word must receive its ordinary construction. In *Stamper* v. *The Overseers of Sunderland* (*c*), *Byles*, J., said, "It is a recognized rule in the construction of Acts of Parliament, that words are to be taken in their ordinary and popular sense, unless the context requires a different sense." There is nothing in the context here to require a different sense. The judgments in *Cook* v. *Humber* (*d*), and *Wilson* v. *Roberts* (*e*), both contain expressions indicating that the Court considered a counting-house might be only part of a house. In *Cook* v. *Humber* (*d*), *Erle*, C.J. (after stating that the statute had described two classes of buildings which qualified—house for residence; warehouse, counting-house, shop, or other

(*a*) *Hopw. & Ph.* 179; *S. C.*, 18 *C. B., N. S.* 175.

(*b*) 1 *Lutw.* 32; *S. C.*, 5 *M. & G.* 33; 7 *Scott's N. R.* 561.

(*c*) *L. R.* 3 *C. P.* 400.

(*d*) *K. & G.* 426; *S. C.*, 11 *C. B., N. S.* 45.

(*e*) *K. & G.* 433; *S. C.*, 11 *C. B., N. S.* 54.

analogous building for commerce) added, "when the claim is in respect of a house, we consider that the Legislature did not intend to create a part of a house used for residence, *and not for commerce*, a tenement sufficient to qualify." And in *Wilson* v. *Roberts* (*a*), in deciding that the qualification failed because the subject of occupation was only part of a house, he said, "It is not stated to be a shop, warehouse, or counting-house" —language indicating that if the subject of occupation had been a shop, warehouse, or counting-house, the qualification would have been sufficient. Secondly, if structural severance be necessary, there is as much here as in *Henrette* v. *Booth* (*b*).

[He was then stopped by the Court.]

BOVILL, C.J. The fact of it having, so far as we are informed, been the practice ever since the Reform Act, 1832, passed, for the occupiers of counting-houses situated as this respondent to exercise the right to vote, shows the almost universal opinion entertained as to the meaning of the word "counting-house." Still, if Mr. *Prentice* could have satisfied us that that is not the correct meaning, it would be our duty to reverse the practice. In the case of *Cook* v. *Humber* (*c*), it was no doubt decided that a "house" within that enactment meant a whole house, the previous decisions on this point having varied, and the words "other building" received a similar construction, because, when the Legislature had just before used the word "house" to

(*a*) *K. & G.* 433; *S. C.*, 11 *C. B.*, *N. S.* 54.

(*b*) *Hopw. & Ph.* 23; *S. C.*, 15 *C. B.*, *N. S.* 50.

(*c*) *K. & G.* 413; *S. C.*, 11 *C. B.*, *N. S.* 33.

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indicate a whole house, the words "other building" could not be extended to include part of one. But with regard to the word "counting-house," I certainly know of no case from the earliest times to the present, to show that that word also must, under this section, mean a whole house. The question now before us turns entirely on the meaning to be assigned to the word "counting-house." In the ordinary acceptation of the word (as indeed is shown by the practice since the Act passed) "counting-house" imports part of a house, and so also does "shop" and "warehouse." In the case before us the rooms are in ordinary acceptation a counting-house, and are so used; and it is for Mr. *Prentice* to make out, that notwithstanding this, they are not a "counting-house" within the Act of Parliament. Now, although so far as I am aware, there is no direct decision on the meaning of the words "warehouse," "counting-house," or "shop," there are cases in which the judges have expressed their views as to their meaning. In *Toms* v. *Luckett* (*a*), *Wilde*, C.J., said, "We all well know that the terms 'warehouse, counting-house, shop,' import *parts of house devoted to particular purposes of business*, and the general words that follow, 'or other building,' must have intended to embrace other separate occupations of distinct portions of a house. The object of the Legislature in introducing these words seems to have been, to prevent the discussions that might be expected to arise out of the previous words. I cannot help thinking that the apartments which this party is described as occupying should be held to fall within the words 'other building,' *just as*

(*a*) 2 *Lutw.* 27; *S. C.*, 5 *C. B.*, 35.

much as the words 'warehouse, counting-house, or shop,' are satisfied by the occupation of distinct portions of a house for the purposes before adverted to." There is, therefore, no question what the opinion of *Wilde*, C.J., was as to the meaning of the word "counting-house." That case, no doubt, is overruled by *Cook* v. *Humber* (*a*), so far as it decided that what was merely part of a house and nothing else constituted a sufficient qualification, but the construction which it puts on the words "warehouse," "counting-house," and "shop," is rather confirmed by the language of the Court in the latter case. In *Wright* v. *The Town Clerk of Stockport* (*b*) the question arose whether certain rooms, forming portions of a factory, were each of them such a "building" within the Act as to entitle their respective occupiers to a vote. *Tindal*, C.J., in delivering the judgment of the Court, said:—"We are of opinion that each of these rooms, held in the manner described in the case, was such a building as to confer the right of voting upon its occupier. It is called in the case a 'room;' it is described as a distinct or separate portion of the factory; each tenant is stated to have the exclusive use of his own room and the key to the door thereof. And we think such a description and such a mode of occupation brings it as much within the meaning of the word 'building' as a 'shop or counting-house,' both of which are expressly specified in the Act." The language there used seems to show that *Tindal*, C.J., considered the words "shop" and "counting-house" to refer to portions of a building. When *Cook* v. *Humber* (*c*) came

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*b*) 1 *Lutw.* 32; *S. C.*, 5 *M. & G.*, 33; 7 *Scott's N. R.* 561.

(*c*) *K. & G.* 426; *S. C.*, 11 *C. B., N. S.* 45.

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before the Court, the question being whether part of a house used as a residence would give the franchise, the Court, while deciding that the word "house" meant a whole house, and could not be extended by the words "other building" to include part of one, expressed no dissent from the interpretation put by *Tindal*, C.J., and *Wilde*, C.J., on the other words of the section; and *Erle*, C.J., in delivering judgment, said:—"As to the kind of tenement which qualifies, the statute has described two classes of buildings, namely, those used for residential, and those used for commercial purposes—house, for residence—warehouse, counting-house, shop, or other analogous building for commerce. When the claim is in respect of a house, we consider that the Legislature did not intend to create a part of a house used for residence, *and not for commerce*, a tenement sufficient to qualify." The Court clearly did not intend there to say that a "warehouse," "counting-house," or "shop," must necessarily be a whole building, or in so elaborate a judgment they would have expressed that with clearness, and from the language I should infer they did not consider it necessary. Moreover, *Wright* v. *The Town Clerk of Stockport* (*a*) is referred to in the judgment without any disapprobation of the language I have quoted of *Tindal*, C.J. Lastly, in *Wilson* v. *Roberts* (*b*), where the subject of occupation was "offices," *Erle*, C.J., in delivering judgment, said:—"In this case the claimant occupied the first floor, being a part of a house, which part had not become, by actual severance, an entire house in any sense of the word; and we consider that the qualification fails, because the tene-

(*a*) 1 *Lutw.* 32; *S. C.*, 5 *M. & G.* 33; 7 *Scott's N. R.* 561.

(*b*) *K. & G.* 433; *S. C.*, 11 *C. B., N. S.* 54.

ment, the subject of occupation, was not sufficient. *It is not stated to be a shop, warehouse, or counting-house.* It was not a house, because it was only part of a house. It was not a building analogous to the others described in the statute, because it was only part of a building, without any actual severance from the other parts." That language seems to show that if the subject of occupation had been used, not as "offices" but as a "warehouse," "counting-house," or "shop," the decision would have been different. On these grounds I think the decision of the Revising Barrister should be affirmed.

There was another point raised, *viz.*, as to the rating, but that really is disposed of by the case of *Wright* v. *The Town Clerk of Stockport* (*a*), from which the present case is not distinguishable.

WILLES, J. I am of the same opinion. Construing the word "counting-house" in accordance with the rule which in statutes conferring the franchise has been consistently acted on, it must include, unless there be something in the subject-matter or context to restrain it to some particular description of counting-house, anything that is a counting-house in the largest ordinary sense of the word. Now, a counting-house in the ordinary sense of the word is part of a house, and there is nothing in the idea which the word conveys to make it necessary that the whole building should be devoted to its purposes. That being so, I think there is nothing in the subject-matter which can restrict the construction of the word. Then does the context restrict it? To determine this, I assume *Cook* v. *Humber* (*b*) has rightly

(*a*) 1 *Lutw.* 32; *S. C.*, 5 *M. & G.* 33; 7 *Scott's N. R.* 561.

(*b*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

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decided that "a house" within the enactment means a whole house, and reading the section by the light of that decision, it runs—"any (whole) house, warehouse, counting-house, shop, or other building." That could at most only create an ambiguity by making it doubtful whether "whole" was limited to the word "house," or applied to the other substantives. All that *Cook* v. *Humber* (*a*) decided was, that it applied to the word "house," but, even on the assumption that there is ambiguity, I think the rule to which I have adverted as governing the construction of statutes conferring the franchise applies. I guard myself, however, from saying with reference to a counting-house, that there is no qualification in the other words of the section. I am disposed to think there is, not indeed in respect of the counting-house constituting an entire building, but in respect of the nature of the occupation. I think it conceivable, and indeed not improbable, that a man might have a counting-house, and yet his occupation might give him no more access to it or control over it than that of a mere lodger. Such an occupier I can understand being held in the situation of a lodger as to the franchise, the ground of exclusion turning, however, not on the occupation of part of a house, but on a lodger not being an occupier within the section. I think, therefore, that if there be in the context anything restrictive, the restriction affects the question as to the sort of occupation that qualifies, not that of part or whole as regards the building. As to that, however, I need say no more here, since this claimant was clearly no mere lodger, but had as much control over the subject

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

of his occupation as an owner over his house, or an occupier of chambers in the Temple over his chambers, the only difference from the latter case being, that there was here an outer door, of which the claimant had a latch key.

BRETT, J. I am of the same opinion. It appears from the case that the mode of occupation was such as to qualify the respondent if the subject of occupation was a "counting-house" within the section. And the facts seem to raise the question, not whether the subject of occupation is structurally complete as a counting-house, but whether it is prevented from being a counting-house, because in structure it forms part of another building. A set of chambers in an inn of court in one sense forms only part of a building, but it is structurally complete as a house, and that is all that *Cook* v. *Humber* (*a*) makes necessary. When *Cook* v. *Humber* (*a*) is said to have overruled *Toms* v. *Luckett* (*b*), that is only to this extent, that in *Cook* v. *Humber* (*a*) the Court adopt the doubt expressed by *Williams*, J., in *Toms* v. *Luckett* (*b*), as to the subject of occupation not being a building, but only part of one, in preference to the opinions expressed on that point by the other judges. I think the cases establish that what in the ordinary and popular sense is part of a house is not a "house" within the enactment, neither is part of a building a "building": and the same mode of reasoning applies equally to a "counting-house" or "warehouse." Thus if part of a warehouse were let off with a temporary partition for a merchant to store his goods in, and the

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*b*) 2 *Lutw.* 19; *S. C.*, 5 *C. B.* 23.

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franchise were claimed in respect of that as a warehouse, the claim would probably fail on the ground that it was not a "warehouse" but only part of one. But that mode of interpretation applied to the present case would show that the claimant who occupies what in the ordinary and popular sense *is* a counting-house, is entitled to be registered in respect of it. The consequence of acceding to Mr. *Prentice's* argument would be to disfranchise whole columns of voters, who have voted ever since the Reform Act, 1832, came into operation.

Decision affirmed with costs.

Attorneys—For Appellant, *Harper, Broad, & Manby.*
For Respondent, *Travers Smith & De Gex.*

BRUMFITT, Appellant; ROBERTS and Others, Overseers of the Parish of Liverpool, Respondents.

Jan. 25, *Feb.* 23.

A claimant declining to be made respondent, the Revising Barrister named the overseers of the parish respondents, and inserted at the heading of the case, and endorsed on the back the names of four persons, whom he described as overseers of the parish; and the notice required by 6 *Vict.* c. 18, s. 62, was served on them. Afterwards, it being discovered that only one of them was an overseer, the other overseers were also served. No respondent appeared:—*Held*, that the appeal might be heard.

By the 56 *Geo.* 3, c. lxv. (local and personal), establishing the church of *St. M.*, (which recited that a lease of land had been procured, and a church built thereon, and that the subscribers and proprietors of the church had purchased the freehold reversion of inheritance thereof in fee simple), certain trustees were appointed for the management of the temporal affairs of the church, &c.; and after the appropriation of some pews to the incumbent, and others as free seats, the residue, being those in sched. 3 of the Act, were subjected to certain rents and assessments (with powers for the churchwardens to enter and sell for non-payment, and also to sue owners). Subject as aforesaid the trustees were empowered to let or sell and convey "*for the purpose only of attending divine service*," and only to the inhabitants of two named parishes.

By the 2 & 3 *Vict.* c. xxxiii. (private), s. 4, reciting that doubts had arisen as to the estate and interest which "the *subscribers* and proprietors of the said church of *St. M.* took in the pews and seats," in sched. 3 it was enacted that "the fee simple and inheritance of and in the said pews or seats" should "be vested in the said *subscribers* to the said church of *St. M.*, or the proprietors for the time being of the same pews and seats, their heirs and assigns for ever," with power to sell and convey them, with the fee simple and inheritance, to any persons willing to purchase.

Held, that, under these statutes no interest passed, either in the lands covered by the pews or seats (in sched. 3), or in any profits arising out of such land, nor any power to grant such interest, and consequently that the grantees of *the subscribers mentioned in* s. 4, could not thereby acquire the county franchise.

THIS was an appeal from the decision of one of the Revising Barristers for the south-western division of the county of *Lancaster*.

The case stated as follows:—

At a Court held for the revision of the list of voters for the said division, the appellant duly objected to the name of *Matthew Redhead* being retained in the list of voters for the said division. The name of *Matthew Redhead* appeared in the list of claimants as follows:—

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Redhead, Matthew	52, *St. George St., Liverpool*	Freehold Pews	72 and 72½, *St. Mark's Church, Upper Duke Street*

The said *Matthew Redhead* produced a deed bearing date the 29th of *April*, 1863, made between *John Highfield* of the one part, and himself of the other part. The deed, after reciting that *Highfield* was seised to him and his heirs of the said pews in the church of *St. Mark*, for an estate of inheritance in fee simple, witnessed that *Highfield* did thereby grant and convey to *Redhead* and his heirs the said pews and the sole and exclusive right of using the same at all times when divine service should be performed in the said church, and at all other reasonable times when the said church should be opened for the use of persons frequenting the same, together with all ways, privileges, and advantages of passage in and through the aisles of the said church, and all other advantages and appurtenances thereto belonging, and all the estate, &c., of the said *Highfield* therein or thereto, habendum to *Redhead*, his heirs and assigns, for ever under and subject to the payment of such yearly rents, and such levies and assessments and other sums of money as should thereafter become due, or be lawfully charged or imposed upon the said pews, or the owners or occupiers thereof, by virtue of "the Act of Parliament relating to the said church." By the same deed *Highfield* covenanted that he was well and absolutely entitled to the said pews, and had power to convey the same to *Redhead* and his heirs in manner aforesaid, and that *Redhead*, and his heirs and assigns, should have quiet possession of the said pews, free from incumbrances

by *Highfield*, or any person or persons whomsoever, except in respect of the said rents and assessments.

It was alleged by *Redhead*, and admitted by the appellant, that *Highfield* derived his title to the said pews from a deed made shortly after the passing of the 2 & 3 *Vict.* c. xxxiii., hereinafter mentioned, by which the persons mentioned in s. 4 of that Act, as "The said subscribers to the said church of *St. Mark*," granted and conveyed the said pews to *Highfield*, and that the last mentioned indenture was in its terms in all respects similar to the indenture of the 29th of *April*, 1863.

Before the conveyance to *Highfield* the said subscribers had not, nor had the "commissioners and trustees" mentioned in the 56 *Geo.* 3, c. lxv., hereinafter referred to, granted, or conveyed any interest in the said pews to any other person.

The church of *St. Mark* was established by the 56 *Geo.* 3, c. lxv., intituled, "An Act for establishing a new church, called the church of *St. Mark*, situate in the town and parish of *Liverpool*, in the County Palatine of *Lancaster*."

[The case then set out several sections of the Act, but the material parts of them appear in the judgment.]

The pews 72 and 72½ are pews contained in the third schedule to that Act.

[The case then set out s. 4 (*a*) of the 2 & 3 Vict., c. xxxiii. (private)].

The pews, 72 and 72½, are each of the annual value of £5, after deducting all charges upon the same. Since *April*, 1863, *Redhead* has been in the habit of attending divine service at the said church of *St. Mark*, and occu-

(*a*) See this section set out in the judgment, p. 398.

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pying one of the said pews during the time of service. No other person has at any time been allowed to use such pew without the permission of *Redhead*. The other of the said pews has been since 1863 occupied in the same manner by persons to whom *Redhead* let the same, and who have regularly paid rent to him therefor.

The Revising Barrister was of opinion that *Redhead* had a freehold estate in the said pews, or one of them, sufficient to entitle him to have his name retained on the list of voters, and he retained his name thereon accordingly. The question for the opinion of the Court was whether the said *Redhead* had a freehold estate sufficient to entitle him to have his name retained on the list of voters. Should the Court be of opinion that *Redhead* had not such a freehold estate, his name was to be erased from the list of voters.

Crompton, for the appellant (*a*). The claim in this

(*a*) No respondent appearing, *Crompton* produced affidavits in proof of the notice of intention to prosecute the appeal, as required by 6 *Vict.* c. 18, s. 64. From the affidavits it appeared that the claimant having declined to support the decision, the Revising Barrister named the overseers of the parish respondents, and inserted at the heading and indorsed upon the back of the special case the names of four persons (which were furnished to him as the names of the overseers) describing them in such heading and indorsement as overseers of the parish. On the 3rd of *November* the four persons so made respondents by the Revising Barrister were served with notice of the intention to prosecute the appeal. On the 5th of *November* it was ascertained that only one of them was in reality an overseer, the others having been previous overseers. The Revising Barrister declining to amend the case, the real overseers were on the 6th of *November* (being ten clear days before the day appointed for hearing the appeal) also served with notice.

Crompton having stated these facts, argued that the overseers being described as overseers of the parish, the names might be rejected as surplusage: that one of the respondents was really an

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case is in respect of freehold pews in *St. Mark's Church, Liverpool,* and it was allowed by the Revising Barrister. The case involves two points, either of which is fatal to the vote. First, the grantors to *Highfield,* from whom the claimant derives title, did not themselves take, nor could they convey to *Highfield* either the site of the pews in question, or a tenement within 8 *Hen.* 6, c. 7. Secondly, whatever may have been the interest of the grantors to *Highfield,* the terms of *Highfield's* conveyance to the claimant are not such as to pass land, or a tenement within 8 *Hen.* 6, c. 7, but merely an easement in the nature of a pew right.

As to the first point. The title relied on being founded on two Acts of Parliament, 56 *Geo.* 3, c. lxv., and 2 & 3 *Vict.* c. xxxiii. (private), it lies on the claimant to establish that under one or both of those Acts the site of the pews in question or the power to convey such site was in *Highfield's* grantors. Dealing with the statutes separately, what was the state of things before the 2 & 3 *Vict,* c. xxxiii. passed? The 56 *Geo.* 3, c. lxv. (under which the Church of *St. Mark* was established) contains three schedules, in some one of which all the pews in the church are comprised. The pews in Schedule 1 are vested by sect. 11 in the incumbent; those in Schedule 2 are by sect. 21 free seats. *The pews now in question are in Schedule* 3. By sect. 17, certain persons and their successors (appointed commissioners and trustees by

overseer, and the other three were found to be so by the Revising Barrister, and that the question was one of fact for him, which he had decided: that the real overseers as well as those found to be so by the Revising Barrister had been respectively served, and no one appeared to take any objection. The Court said that it was proper the matter should have been mentioned, but that the appeal might be heard.

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sect. 4) are empowered to let, or sell, and convey the pews or seats not otherwise appropriated (*i.e., pews in Schedule* 3) "for the purpose only of attending divine service." And by sect. 20 the right of acquiring a pew or seat in the church is restricted to the inhabitants of certain parishes. Moreover, by ss. 13 & 15, pews and seats in Schedule 3 are chargeable with certain rents and assessments, with power to the churchwardens to enter and let or sell upon default in payment. It is manifest that under that statute the owner of a pew or seat in Schedule 3 was intended by the Legislature to enjoy only a limited right in the nature of an easement, the Legislature expressly limiting the enjoyment which it permitted (as the subject of sale) to attendance at divine service. Then 2 & 3 *Vict.* c. xxxiii., s. 4, reciting that doubts had "arisen as to the estate and interest which the subscribers to and proprietors of the said Church of *St. Mark* took in the pews and seats" in the 3rd Schedule proceeds to vest "the fee simple and inheritance of and in the said pews or seats" "in the subscribers to the said Church of *St. Mark*, or the proprietors for the time being, of the same pews and seats their heirs and assigns for ever," and empowers them to sell and convey "all or any of the said seats or pews, together with the fee simple and inheritance of the same respectively." Now the grantors to *Highfield* are no doubt the persons mentioned in that section as "the subscribers to the Church of *St. Mark*," but it is submitted that they do not by virtue of that section acquire any estate in the site of the pews or seats, but merely a right of sitting there, which since that statute they may sell without restriction, whether the purchasers are parish residents or not. The section enlarges in this respect

the extent of the interest which a proprietor took in his pew or seat under the former Act, but does not alter its nature, which is still that of a mere easement.

[BRETT, J. The statute recites that "doubts have arisen, &c." What doubts could exist as to the *extent* of the interest of "*the subscribers to the church?*"]

The right of a pew proprietor under the former Act was fettered by the restriction as to residence, which the present section abolishes.

[BRETT, J. The doubts recited are not as to the estate and interest of purchasers of pews or seats, but of "the subscribers to and proprietors of the Church of *St. Mark.*" Who do you say that the enactment means by "subscribers?"]

Probably subscribers who have obtained pews.

[BRETT, J. Can that be? Read the section leaving out the words, "the proprietors for the time being of the same pews and seats."]

Possibly those words are explanatory of the subscribers' interest.

[WILLES, J. It is a pity the case does not set forth the original conveyance from the Mayor and Corporation of *Liverpool*, nor state whether the parties who conveyed to *Highfield* were the "commissioners and trustees" or "the subscribers."

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BRETT, J. The 56 *Geo.* 3, c. lxv., does recite however, "that the subscribers to and proprietors of the said church or chapel have purchased from the corporation the freehold inheritance in fee simple of the said church or chapel."]

Hinde v. *Chorlton* (*a*) is an authority that in construing Acts of this kind the intention should be regarded, and in accordance with that decision, sect. 4 of the 2 & 3 *Vict.*, c. xxxiii., must receive a reasonable construction. It cannot have been the intention of the Legislature to destroy the machinery of the 56 *Geo.* 3, c. lxv., which vested a power of sale in the "commissioners or trustees," and the Court should give that interpretation to the later Act, which will do the least violence to the machinery of the earlier one. It is difficult to conceive the intention of the later Act to have been to convert what was till then an easement in gross into an interest in the soil, especially when the language used is such as to be readily satisfied by a different interpretation. Moreover, the argument of convenience, *viz.*, that the enjoyment should continue to be subject to regulations, and qualified as it existed under the earlier Act, points strongly in the same direction. So also does the rule of the common law—as to which the authorities establish that a freehold interest in the site of a pew in the body of a church is a thing unknown to the law. *Mainwaring* v. *Giles* (*b*), *Chapman* v. *Jones* (*c*). If the site of the pew be vested in the individual, what is there to prevent his raising its height, for the purposes of seclusion, or dealing with it in any other way

(*a*) *Hopw. & Ph.* 383; *S. C.*, *L. R.*, 2 *C. P.* 104.

(*b*) 5 *B. & Ald.* 361.

(*c*) *L. R.*, 4 *Exch.* 273.

that his whim or caprice might dictate. Possibly his rights would even then be limited by the churchwardens' right of access at reasonable times—*Griffin* v. *Dighton* (*a*), but that is not enough to remedy the suggested inconvenience.

Secondly. Whatever interest *Highfield's* grantors took, the terms of the conveyance to *Highfield* and from *Highfield* to the claimant, are not such as to pass more than an easement.

[No one appeared as respondent.]

Cur. ad. vult.

The judgment of the Court (BOVILL, C.J., WILLES, J., and BRETT, J.) was now delivered by

BOVILL, C.J. In this case one *Matthew Redhead* claimed to be registered in the parish of *Liverpool* as a voter for the south-western division of the county of *Lancaster* in respect of an alleged qualification thus described in his claim:—"Freehold pews, 72 and 72½, *St. Mark's* Church."

In support of his claim *Redhead* produced a deed bearing date the 29th of *April*, 1863, made between one *John Highfield* and the said *Matthew Redhead*, whereby after reciting that *Highfield* was seised to him and his heirs of the said pews, &c., *for an estate of inheritance in fee simple*, it was witnessed that *Highfield* did thereby grant and convey unto *Redhead* and his heirs the said pews, and the *sole and exclusive right of using the same at all times when divine service, should be performed in the said church*

(*a*) 5 *B. & S.* 93.

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and at all other reasonable times when the said church should be opened for the use of persons frequenting the same.

It was admitted that *Highfield* derived his title from a deed in the same terms made shortly after the passing of the statute 2 & 3 *Vict.* c. xxxiii. between *Highfield* and the persons mentioned in s. 4 as "the said subscribers to the said Church of *St. Mark's.*"

The Church of *St. Mark's* was established under the statute 56 *Geo.* 3, c. lxv. By s. 1 of that statute it was recited among other things that several of the inhabitants residing in the parish of *Liverpool* had *procured a lease* of land from the corporation of *Liverpool*, and had built a church or chapel thereon with galleries, pews, seats, and other conveniences, accomodations, &c.; and that the *subscribers to and proprietors of the said church or chapel, having purchased from the corporation the freehold reversion and inheritance in fee simple of the said church or chapel*, had procured the said church or chapel to be consecrated, &c. The statute then enacted by s. 4, that certain persons and their successors were appointed commissioners and trustees, for the management of the temporal affairs of the church, and other purposes thereinafter mentioned; by s. 6, that two persons should be appointed annually to act as churchwardens, with power to collect seat and pew rents, and in case of non-payment of rents, the commissioners and trustees were authorized and empowered to enter upon and sell, *or else to sue for and recover the rent by action;* by s. 11, the pews or seats in schedule 1 were for ever to become the sole and exclusive property of the incumbent, and the churchwardens were out of the yearly rent of the pews and seats in schedule 3, to pay the incumbent of the parish the yearly sum of £250. By s. 13, it is

enacted that all the pews and seats, save and except those in the first and second schedules (*i.e.*, all the pews and seats in the third schedule) shall for ever be subject to the yearly rents set opposite them in the third schedule; and all such pews or seats shall also be *charged with such other rateable leys or assessments to be made as shall be necessary*, &c. By s. 15, it is provided that every *purchaser*, &c., of a seat or pew, &c., shall *pay the rent* charged thereon as aforesaid, *and every such other rateable ley or assessment as aforesaid;* and in default the churchwardens shall and may enter upon and hold such seat or pew, or let the same, or sell the same by auction, or *the churchwardens may sue for and recover the said rent ley or assessment by action of debt or upon the case for the use and occupation of such pew or seat to be brought against the owner*, &c. By s. 17 (*a*), the commissioners and trustees and their successors are empowered to let or sell and transfer and convey "*for the purpose only of attending divine service*," all and every of the pews or seats, &c., which are not by the Act otherwise appropriated, &c. But by s. 20 (*b*), such sale can be made only

(*a*) Sect. 17. "That the said commissioners and trustees and their successors are hereby authorized and empowered to let or sell and transfer and convey for the purpose only of attending divine service all and every or any of the pews and seats in the said church or chapel (which are not by this Act or otherwise allotted or appropriated) now remaining unsold to any person or persons whomsoever desirous of taking or purchasing the same or who shall or may have already contracted or agreed for the purchase thereof, and to receive the rents and purchase-moneys for all such pews or seats respectively for the use and benefit of the original subscribers to and proprietors of the said church or chapel and their respective legal personal representatives to be annually divided amongst them on *Easter Tuesday*."

(*b*) Sect. 20. "That no seat or pew in the said church or chapel shall at any time be sold or disposed of to any person or persons whomsoever who shall not be at the time of such sale or disposal an inhabitant of one of the said parishes of *Liverpool* or *Walton* aforesaid."

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to such as are at the time inhabitants of one of the two parishes which are named. By s. 21, the seats in schedule 2 are free seats. Schedule 3 comprises all the pews in the church or chapel which are not in schedules 1 and 2. The pews in question are in schedule 3.

In the statute 2 & 3 *Vict.* c. xxxiii. s. 4, is as follows: —"Whereas doubts have arisen as to the estate and interest which the subscribers to and proprietors of the said Church of *St. Mark* took in the pews and seats set forth in the third schedule of the recited Act, be it enacted *that the fee simple and inheritance* of and in the said pews or seats set forth in the third schedule shall be vested in the said subscribers to the Church of *St. Mark* or *the proprietors for the time being* of the same pews and seats, *their heirs and assigns* for ever; and they are hereby authorized and empowered to sell, dispose of, and convey all or any of the said seats or pews, together with the fee simple and inheritance of the same respectively to any person or persons willing to become purchasers thereof."

Upon these facts and circumstances it was contended for the claimant that by virtue of the Acts of Parliament or one of them and of the deeds, he was possessed of the freehold, not only of the pews, but of the land on which they stood; and, if not, but only of the pews, yet that he was entitled to them as free tenements, as being profits arising out of the land, and therefore entitled to vote as being owner of a tenement within the statute 8 *Hen.* 6, c. 7. It was contended for the appellant, that neither by the Acts of Parliament nor by the common law could the grantors to *Highfield* grant to him more than an easement; and that, consequently, they did grant only an easement; and therefore he,

Highfield, could only grant an easement to the claimant; and it was further contended that, if the original grantors could and did grant more than an easement to *Highfield* still he had only, by the terms of his deed, granted an easement to the claimant.

The case depends, no doubt, entirely upon the construction of the Acts of Parliament; and the questions which arise are: first, did the Act of *Geo.* 3 empower the original grantors to grant to *Highfield* an estate of freehold in the land on which the two pews stood, or a tenement in the pews in respect of which he might have voted by virtue of the 8 *Hen.* 6, c. 7? and, secondly, if it did not, did the 2 & 3 *Vict.* c. xxxiii. give to the original grantors power to make grants of a freehold estate in the land, or of free tenements within the statute of *Hen.* 6, in the pews, to *Highfield*?

Now, in the first place, it must be remembered that, unless the statutes do, or one of them does, expressly give the suggested rights, the ownership of a pew could not carry with it the freehold in the soil, nor more than an easement in the nature of an exclusive right to occupy the pew during divine service and the times of other religious observances.

By the common law there is no property in, nor any right to sell or let, a pew or seat in the body of a parochial church or chapel. The freehold is generally in the parson; and the inhabitants have the right to use the church for divine worship, though the right to use particular seats may have been acquired as appurtenant to particular messuages, by faculty or prescription, or for the time by the appropriation of the churchwardens or the ordinary. The right in a pew is essentially a right to use it for the services of the

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church, and at times when it is open for use, subject to the regulations of the church, and there is no right of access to it or to use it for other purposes or in any other manner.

The word "pew" is said to be derived from the Dutch "puye," and to signify "a seat enclosed in a church" (*a*). And obvious inconvenience would arise if it were lightly held that each owner of a pew or seat was owner of so much of the site of a church as is comprised within the area of such pew or seat.

And again, it is necessary in order to determine this case in favour of the respondents, to distinguish it from the case of *Hinde* v. *Chorlton* (*b*), in which a similar claim to the present, made upon a statute at all events *primâ facie* not dissimilar from the statutes in this case, was disallowed. It lies strongly, we think, on those who rely upon the present Acts of Parliament to show that they clearly enact the unusual consequences sought to be derived from them. Now, on examining the first Act, we find, in the first place, that the freehold and fee simple in the church or chapel are recited to be in the original subscribers and proprietors of the church or chapel who, after having taken the lease for lives of the site are said to have purchased the reversion thereof in fee. Secondly, we find that there are no words in the statute assuming to pass any interest in land, but only in terms in pews or seats. Then we find not only that the pews and seats are subject to payment of rent, but that the churchwardens may assess upon them leys or assessments; and *the churchwardens may sue for and recover the said rent, ley, or assessment by action, for use*

(*a*) *Johnson's Dictionary.* *L. R.*, 2 *C. P.* 104.
(*b*) *Hopw. & Ph.* 383; *S. C.*,

and occupation to be brought against the owner. And when the commissioners or trustees are empowered to sell and convey, *it is only for the purpose of attending divine service.*

It seems to us that upon a candid consideration of these enactments it is impossible to say that the Legislature has given to the owners of these pews and seats any freehold interest in the land which is covered by such pews and seats or in any profit arising out of such land. There are none of the recognized terms for passing such interests; and the incidents imposed on the ownership of the pews and seats are inconsistent with the rights of ownership in the land. The interest which passes by the statute is in terms an interest in "a pew or seat," that is, an interest in the occupation of a pew or seat "to be enjoyed during divine service and other times of religious observances." Such an interest is not an interest in land, but an interest of a peculiar nature created by the Act of Parliament, and more in the nature of an easement, though there are attached to it incidents of perpetuity of possession which could only be attached to such a right by the power of legislation. The statute has created a special interest in the pews and seats not known to the common law, and such interest exists by force of the statute; but it is of a very peculiar nature, and does not in our opinion create such an estate or interest in the land as will confer a vote. In a similar manner, this Court recognized the creation of a new species of statutory property and interest in water in the case of *Medway Navigation Company* v. *Earl Romney* (*a*).

Such being our view of the true interpretation of the

(*a*) 9 *C. B., N. S.* 575, 591.

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statute of *Geo.* 3, we must next consider the effect of the statute 2 & 3 *Vict.* c. xxxiii. That statute has, no doubt, very strong words referring to the extent of the interests of owners of some of the pews and seats, *viz.:* those in the third schedule, but it does not seem to us to alter in any way the nature of the subject matter in respect of which or in which that interest exists. The subject matter is still a pew or seat, and not land or any free tenement such as was known to the common law, so as to be within the statute 8 *Hen.* 6, c. 7. The present case is, as it seems to us, governed by the case of *Hinde* v. *Chorlton* (*a*), for in that case although the freehold of the church was in the rector, the contention was that the freehold in the land on which the pews were placed or a freehold in a free tenement, passed to the owners of pews by virtue of certain Acts of Parliament. In those statutes the pews or seats were to be held by the proprietors, *their heirs, executors, administrators, successors, and assigns,* and the trustees were empowered to sell the pews or seats *and the fee simple and inheritance thereof,* and by the sale and conveyance the pews or seats were to be vested in the purchasers and *their heirs and assigns for ever,* yet the Court held that such purchasers were not entitled to be registered.

We think that the statutes in the present case in like manner have not the effect suggested by the respondents, and are of opinion that upon the true construction of the statutes, the decision of the Revising Barrister cannot be supported and that it must be reversed.

Decision reversed.

Attorneys—For Appellant, *Beale, Marigold & Beale,* agents for *R. W. Biggs, Liverpool.*

(*a*) *Hopw. & Pk.* 383; *S. C., L. R.,* 2 *C. P.* 104.

GREENWAY, Appellant; HOCKIN, Respondent.

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By 27 *Geo.* 3, c. xvii., for rebuilding the chapel of *E. S.*, trustees were appointed, with the necessary powers for carrying the Act into execution, and the materials of the old chapel were vested in them. By s. 4 the new chapel was to be built on the old site, or near to it, and when built was to be repaired by the same means as the old chapel had been; and by s. 12 any overplus moneys arising by virtue of the Act were to be applied towards the repairs. By s. 8 the rights of the vicar of the parish of *St. A.* to appoint the curate of the chapelry of *E. S.*, and any other rights belonging to him were preserved. By s. 9 the trustees were required to appropriate all the pews in the chapel, (except one for the curate,) to the subscribers to the building who "should respectively be deemed proprietors of such number of pews or seats as should be proportionable" to their subscriptions, "and such pews or seats should be vested in such proprietors respectively, their heirs or assigns for ever." Beyond what could be inferred from the terms of the Act, there was nothing to show in whom the fee of the chapel was vested before the Act passed.

Held (following *Hinde* v. *Chorlton* (*a*), and *Brumfitt* v. *Roberts* (*b*)), that under this Act the proprietor of a pew took no such interest as would confer the county franchise.

THIS was an appeal from the decision of the Revising Barrister for the southern division of the county of *Devon*.

The case stated as follows:—

At a Court held for the revision of voters for the said division, *John Greenway* duly objected to the following claim to be entitled to vote in the election of members for the said southern division, in respect of property within the parish of *East Stonehouse*.

Cox, George	*Manor House, Emma Place, Stonehouse*	Freehold pew	*No. 74, St. George's Chapel, Stonehouse*

The pew was in *St. George's Chapel* within the parish of *East Stonehouse*, which had been rebuilt under a public Act, 27 *Geo.* 3, c. 17, intituled, "An Act for

(*a*) *Hopw. & Ph.* 383; *S. C., L. R.*, 2 *C. P.* 104. (*b*) *Ante* p. 387; *S. C., L. R.*, 5 *C. P.* 224.

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Rebuilding the Chapel of *East Stonehouse* in the county of *Devon*."

By that Act, after reciting that the chapel of the chapelry of *East Stonehouse*, in the county of *Devon*, was a very ancient building, and was become much decayed, and was not sufficiently large for the inhabitants of the said chapelry to attend divine service therein, and that the vicar of the parish of *St. Andrew, Plymouth*, in the said county, for the time being, had in right of the said vicarage the nomination and appointment of the curate of the said chapelry, and the Rev. *James Fromeaux* was the then curate thereof; and that the building of a new chapel within the said chapelry sufficiently large for the inhabitants, would be a great convenience to them, and would tend to the encouragement of religious worship, within the said chapelry, it was by s. 1 enacted, that certain persons therein named, and every person who should subscribe the sum of £50 or upwards towards erecting a new chapel in pursuance of the said Act, and also the lord of the manor of *East Stonehouse* for the time being, the mayor of *Plymouth* for the time being, the commandant of the Marines in the barracks at *East Stonehouse* for the time being, and the curate and two chapel wardens of the said chapelry for the time being should be, and they were thereby appointed trustees for taking down the then chapel within the said chapelry, and erecting a new chapel instead thereof, and for carrying the said Act into execution.

And it was thereby further enacted by sect. 4, that it should be lawful for the trustees, and they were thereby authorized and empowered to cause the then chapel of the said chapelry to be taken down at such time as

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they should think fit; and the materials thereof should be, and were thereby vested in the said trustees, and they were thereby authorized and empowered to sell, or otherwise dispose of the same for the purposes of the said Act; and it should also be lawful for the trustees, and they were thereby authorized and empowered by contract or otherwise, to cause a chapel to be erected or built upon the site of or near to the present chapel of the said chapelry, after such model and of such dimensions, and in such manner as the trustees should think proper, and also to cause such pews or seats, and galleries, and also such furniture, ornaments, and conveniences to be made, erected and placed in the said new chapel as the said trustees should think proper or necessary, which said pews or seats should be built as uniformly as conveniently might be, and should be numbered in such manner as the trustees should think proper.

And it was further enacted by sect. 9, that it should be lawful for the trustees, and they were by the Act required to set out and appropriate a seat or pew in the said new chapel unto, or for the curate of the said chapelry, and the same should for ever after belong to the curate of the said chapelry for the time being, without his paying anything for the same, provided he or any of his family should reside within the said chapelry; and that all other the pews or seats in the said new chapel should be respectively set out and appropriated by the trustees unto, or for the several persons who should subscribe money towards building the said new chapel, and such persons should respectively be deemed proprietors of such number of the said pews or seats as should be proportionable to the sums by them respectively sub-

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scribed, and should respectively have the preference in the choice of the situation of their pews or seats, according to the amount of their respective subscriptions; and such pews or seats should be vested in such proprietors respectively, their heirs and assigns for ever.

The pew in question was set out and appropriated by the trustees to a subscriber to the building of the chapel, and had been conveyed by such subscriber to the person who had conveyed to *George Cox*. It was admitted that the pew exceeded 40*s.* a year in value.

George Cox occupied the pew by himself and family.

No evidence was given to show in whom the freehold of the soil was vested previously to the passing of the Act.

On behalf of the appellant, who quoted *Hinde* v. *Chorlton* (*a*), it was contended that the voter was not entitled to vote, the Act having only conferred an easement upon him.

On behalf of the respondent, it was contended that the Act conferred a freehold interest to subscribers to whom pews were appropriated by the trustees; that the present case was distinguishable from *Hinde* v. *Chorlton*, the vicar of the parish of *St. Andrew* not being made a trustee under the Act; that the money was subscribed for the purpose of building the church, and not paid for pews after the church had been built; and that the Act contained no restriction from parting with the pews to other than parishioners.

The Revising Barrister held that the voter was entitled to have his name retained on the list of voters.

The cases of eighteen other persons whose retention

(*a*) *Hopw. & Ph.* 383; *S. C., L. R.*, 2 *C. P.* 104.

on the list of voters was objected to by the appellant, and of nine other persons objected to by the respondent, were consolidated with the principal case.

If the Court should be of opinion that the Act conferred such an interest as to entitle the owner to vote, the names objected to were to remain on the list; otherwise they were to be erased.

Mellish, Q.C. (*Charles* with him) for the appellant. The claim which the Revising Barrister has allowed is to a vote for a freehold pew in *St. George's Chapel* at *East Stonehouse, Devonshire*, which was rebuilt under 27 *Geo.* 3, c. xvii. (*a*). Beyond what can be inferred from the Act itself, there was no evidence before the Revising Barrister, nor indeed was any procurable, as to who was the person in whom the freehold of the chapel was vested before the Act passed. But in whomsoever it was vested, the Act at all events does not divest it. By sect. 1, trustees were appointed for taking down the old chapel, and building a new one. By sect. 4 (*b*), the materials of the old chapel were vested in the trustees, and they were empowered to erect the new chapel "upon the site of or near to the" old chapel. The words "near to" were no doubt introduced, because inasmuch as the old chapel was, as the Act recites, not sufficiently large for the wants of the inhabitants, the walls of the new chapel would probably be required to extend beyond the old walls. The section concludes by enacting that "after the said chapel shall be built and completed as aforesaid, the same shall from time to time

(*a*) By s. 14. To be deemed a public Act, and judicially taken notice of as such.

(*b*) *Ante*, p. 404, 405.

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be supported and kept in good and sufficient repair and condition, by the like ways and means as the present chapel hath heretofore been supported or repaired." But what those ways and means were by which the chapel was previously supported and repaired there is no evidence to show. From the preamble of the Act, and also from sect. 8 it appears that the appointment of the curate of the chapelry is in the vicar of the parish of *St. Andrew, Plymouth;* and, if before the Act passed, the freehold of the chapelry was also in the vicar, as presumably it was, since there is no evidence of its being in anybody else, then the language of sect. 8 (*a*) is amply sufficient to preserve it. Sect. 9 (*b*) empowers the trustees to appropriate a pew or seat to the curate, to belong to the curate for the time being for ever, provided he or any of his family should reside within the chapelry (a restriction which shows that the fee simple thereof cannot vest in the curate); and enacts, that all the other pews or seats shall be set out and appropriated by the trustees to subscribers to the building, and that "such persons shall respectively be deemed proprietors of such number of the said pews or seats as shall be proportionable to the sums by them respectively subscribed . . . . and such pews or seats shall be vested in such proprietors respectively, their heirs and assigns for ever." Far stronger language than

(*a*) Sect. 8 provides. "That nothing in this Act contained shall anyways prejudice, lessen, or affect the right of the vicar of the said parish of *St. Andrew*, for the time being, in or to the presentation, nomination, or appointment of the curate of the said chapelry, or any other right belonging to the said vicar . . . . but that the vicar of the said parish and the curate of the said chapelry for the time being, shall have and enjoy all such rights and interests as they would respectively have had, enjoyed, or been entitled to, in case this Act had not been made.

(*b*) *Ante*, p. 405.

that was held, in *Hinde* v. *Chorlton* (*a*), not to empower the trustees created by a similar Act to grant the site of the pews, or a tenement within 8 *Hen.* 6, c. 7; although there was there a statutory form of conveyance, and here there was no conveyance at all by the trustees. That an easement is not a tenement is clear on authority, though a profit *a prendre* may be. Sect. 10 (*b*), which directs certain payments to continue payable out of certain tithes arising within the chapelry, shows that, to a certain extent, this was an endowed chapelry.

[BOVILL, C.J. Probably it was a parochial chapelry, endowed with a portion of the tithes.]

The presumption is that the freehold of the chapelry is

(*a*) *Hopw. & Ph.* 383; *S. C., L. R.*, 2 *C. P.* 104.

(*b*) Sect. 10, after reciting that a salary or yearly sum of twenty-five pounds to the curate, and of fifty shillings to the clerk of the said chapelry, have been heretofore payable out of the money arising from the breaking up of the burial-ground, and *certain tithes arising within the said chapelry*, enacts: "That the said respective salaries or yearly sums shall continue payable as heretofore, by the churchwardens of the said chapelry, out of the money arising from the breaking of the said burial-ground, and *the tithes arising within the said chapelry* (excepting the tithes of the Royal Hospital within *East Stonehouse* aforesaid): and in case of a deficiency in any year, such deficiency shall be made up by the respective proprietors of the said pews or seats within the said new chapel, in such shares and proportions as the said trustees shall direct and appoint, having regard to the value of their respective pews or seats, such shares and proportions to be specified and set forth in the book in which the numbers of the pews or seats are directed to be entered as aforesaid, and also in the duplicate thereof to be kept by the steward of the said manor as aforesaid; and in case the proprietor of any of the said pews or seats shall neglect or refuse to pay his share or proportion of any such deficiency the same shall and may be levied and recovered by distress and sale of the goods and chattels of the person neglecting or refusing to make such payment as aforesaid, by virtue of a warrant under the hand and seal of any justice of the peace for the county or place wherein such person shall

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in the vicar, but at all events, it is for the respondent to make it out to be in the trustees, under whom he claims. Sec. 12 (*a*) directs surplus moneys arising under the Act to be applied towards supporting and repairing the new chapel. Coupling that with the provision in sect. 4 for the repair and support of the new chapel by the same means as the old one, it would seem that the burden of repairing his pew was not intended to be borne by the pew proprietor, and if so, that is strong to show that the site of the pew is not vested in him. The inconveniences that would result from actions of trespass and ejectment for pews are manifest. How, for example, would the sheriff deliver possession? And that a pew should confer the franchise is also in itself an inconvenience. It would enhance the price of pews, and be an easy mode of creating votes.

Lopes, Q.C. (*Bosanquet* with him), for the respondent. The question turns on sect. 9 of the 27 *Geo.* 3, c. xvii., which enabled a subscriber to the building of the chapel to become proprietor not merely of a pew, but of as many pews as might be proportionable to the sums sub-

be or reside (which warrant such justice is hereby empowered and required to grant, upon proof, upon oath of such money being due and unpaid) rendering the overplus (if any) to the owner of such goods and chattels, after deducting the reasonable charges of such distress and sale."

(*a*) Sect. 12 enacts. "That all the money which shall come to the hands of the said trustees, or of their treasurer, by virtue of this Act, shall be applied in the first place, in paying and defraying the charges and expenses of obtaining and passing this Act, and afterwards in taking down the present chapel, and in erecting and completing the said new chapel, and in defraying all other charges and expenses occasioned by or attending the same; and if there shall be any *overplus*, the same shall *be applied towards supporting and repairing* the said new chapel."

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scribed by him towards the building. That points to an ownership by such subscriber of part of the soil of the chapel, and differs from cases in which there is merely a purchase of a pew. At all events the section vests in a subscriber an exclusive right of enjoyment to him and his heirs of the pews or seats appropriated to him, which it is submitted is a tenement within the 8 *Hen.* 6, c. 17. In *Co. Litt.* 6 a, it is said "*Tenementum* (tenement) is a large word to pass not only lands and other inheritances which are holden, but also offices, rents, commons, profits, apprender out of lands and the like wherein a man hath any frank tenement, and whereof he is seized *ut de libero tenemento*" (*a*). *Tenementum* is the only word used in the statute *De donis* (*b*), and thereupon Lord *Coke* remarks that "it includeth not only all corporate inheritances which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exercisable within the same, though they lie not in tenure, therefore all these without question may be entailed, as rents, estovers, commons or other profits whatsoever granted out of land, or uses, offices, dignities which concern lands or certain places, may be entailed within the said statute, because all these savour of the realty." If the right in question be not a tenement, it may be asked, what is it? It may be difficult to say in whom the freehold of the chapel is vested; but it may be observed that sect. 4 did not require the new chapel to

(*a*) *Elliott*, after quoting this passage from Lord *Coke*, remarks: "It would appear, however, that there are many things falling within that wide description which will not confer the elective franchise." *Elliott on Qualifications and Registrations*, p. 33.

(*b*) 13 *Ed.* 1, c. 1.

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be built upon the site of the old one, but "upon the site," or "near to" it.

[BOVILL, C.J. The new chapel was to be built as in *Hinde* v. *Chorlton* (*a*), in substitution of the old one.]

The present case is distinguishable from *Hinde* v. *Chorlton* (*a*) in several particulars. Among others the statute in this case contains no restriction on the parting with pews to persons who are not parishioners.

Mellish, Q.C. In reply. The instances cited by Lord *Coke* are cases of profits *d prendre*, not of easements. There is no authority for the proposition that an easement can qualify. A profit *d prendre* may possibly do so where the enjoyment is exclusive.

The judgment of the Court (BOVILL, C.J., WILLES, J. and BRETT, J.) was now (*Feb.* 23) delivered by

BOVILL, C.J. In this case, acting in accordance with the judgment we have given in *Brumfitt* v. *Roberts* (*b*), and with the judgment in *Hinde* v. *Chorlton* (*a*), we are of opinion that the decision of the Revising Barrister must be reversed.

Decision reversed.

Attorneys—For Appellant, *Wigg & Co.*
For Respondent, *W. Harris*, agent for *J. Kelly, Plymouth.*

(*a*) *Hopw. & Ph.* 383; *S. C., L. R.*, 2 *C. P.* 104.

(*b*) *Ante*, p. 387; *S. C., L. R.*, 5 *C. P.* 224.

ALLEN, Appellant; GEDDES, Town Clerk of Warrington, Respondent.

Jan. 21, *May* 3.

THIS was an appeal from the decision of one of the Revising Barristers for the borough of *Warrington*.

The case stated as follows:—

Samuel Dunbobbin objected to the names of the appellant and the other persons whose names appeared in the schedule being retained on the list of voters.

The notices of objection which had been served upon the said parties were in the following form:—

"To *John Allen*,

"12, *Rolleston Street, Warrington*.

"I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of *Warrington*.

"Dated this 24th day of *August*, 1869.

"(Signed) *Samuel Dunbobbin*,

"On the list of voters for *Golborne Street*, in the borough of *Warrington*."

It was objected on behalf of the said *John Allen* and of the other persons whose names appeared in the said schedule, that such notices of objection were bad, as they did not specify the list upon which the name of the objector was to be found.

The borough of *Warrington* consists of three town-

A. gave notice of objection, in which he described himself as "on the list of voters for *Golborne St.*, in the borough of *W.*" The borough contained three townships, with separate lists. There was only one *Golborne Street*. It lay wholly in one of the townships, and the description was one which would be commonly understood in the borough to designate the list of that township:—*Held*, by force of 6 *Vic.* c. 18, s. 101, a sufficient notice.

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ships (*a*), each having a separate overseer, each of whom has only one list of voters to make out, and the register of voters for the borough of *Warrington* is composed of the said three several lists.

It was contended in support of the objection to the said notices, that they did not comply with the form and directions given in Schedule B., No. 11 of "The Registration Act," 6 Vict., c. 18, not stating upon which of the said three lists the name of the objector appeared.

The Revising Barrister held the notice of objection good, and granted this case for the decision of this Court, as to whether it was necessary that the objector should state in the notices of objection upon which particular list of voters his name was to be found.

Holker, Q.C. (*T. J. Barstow* with him) (*b*), for the appellant. The objection overruled by the Revising Barrister, and on which this case has been granted, was that, there being three lists for the borough of *Warrington*, the notice of objection served on the appellant did not specify on which list the name of the objector appeared, and in that respect did not comply with the form in Schedule B., No. 11, of the 6 Vict., c. 18. The notice of objection is signed as follows:—"*Samuel Dunbobbin*, on the list of voters for *Golborne Street*, in the borough of *Warrington*." The form of signature prescribed by the statute runs "A. B., of [place of abode], on the list of voters for the parish of ." The notice is clearly bad on another ground, *viz.*, that it does not state the objector's "place of abode," but that

(*a*) *Warrington, Latchford, and Thelwall.*

(*b*) *Jan.* 21. *Coram Bovill*, C.J., *Willes*, J., *and Brett*, J.

objection seems not to have been taken. But on the authority of *Edsforth* v. *Farrer* (*a*) and *Crowther* v. *Bradney* (*b*) it is submitted that the objection which was taken, *viz.*, that the particular list was not specified by the notice, is equally fatal. In *Edsforth* v. *Farrer* (*a*) a notice describing the objector, who was on the list of freemen "as on the list of voters for the borough of *Lancaster*," was held insufficient, the register there consisting of four separate lists, three of which were lists of the £10 householders in the three townships within the borough, and the fourth that of the freemen. Further, it was there held that the 6 Vict., c. 18, s. 101, could not cure such an inaccuracy. So in *Crowther* v. *Bradney* (*b*) where there were two lists for the parliamentary borough of *Kidderminster* and the notice did not indicate on which list the objector's name was to be found, the same principle was held applicable, *Erle*, C.J., observing that the objection given was not "sufficiently precise to enable the persons objected to to find" the objector's "name in its proper list, without being subjected to the undue burden of having to search several lists in several places." *Moon* v. *Andrew* (*c*) has no bearing on the present point. There the objector described himself as "on the list of voters for the borough of *Penryn*;" but although there were six lists for the parliamentary borough, the context clearly showed that the words "borough of *Penryn*" meant the municipal borough, for which there was in fact but one list. In the present case, "*Golborne Street*" can, of course, itself have no list, nor is there anything in the notice to indicate in

(*a*) 1 *Lutw.* 517; *S. C.* 4 *C. B.* 9.
(*b*) *Hopw. & Ph.* 63; *S. C.* 15 *C. B., N. S.* 536.
(*c*) *Ante*, p. 75; *S. C., L. R.* 4 *C. P.* 461.

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what township "*Golborne Street*" is. It may be that one part of it is in one township, and another part in another; or there may be even two streets of that name within the borough.

[BRETT, J. Suppose the Revising Barrister had found that there was but one *Golborne Street*, the whole of which was in one township?]

The notice would still not convey sufficient information to the person objected to. The question submitted by the Revising Barrister for the consideration of the Court is, whether it was *necessary* that the objector should state in his notice of objection upon which particular list of voters his name was to be found. The cases cited clearly establish that it is necessary.

[BOVILL, C. J. In the cases you rely on there was nothing to indicate on which of several lists the objector's name appeared. But to people who live in the neighbourhood it is quite possible that *Golborne Street* may be a description which would give full information on that point.

BRETT, J. Suppose an objector described himself as "on the list of voters for *St. James' Street*," or, "on the list of voters for *Hanover Square?*"]

It may be doubtful whether the constituency generally would be aware in what parishes the street and square in question were respectively situated. However, if the Revising Barrister had found that there was but one *Golborne Street*, and that everybody knew perfectly well

where it was, and what list it indicated, the case might then be one of misnomer within sect. 101. Here, however, the Revising Barrister has found no such facts, and the Court will not presume them.

[The respondent did not appear.]

BOVILL, C.J. I think the case should go back to the Revising Barrister for amendment. The matter stands thus. If the description in the notice be one that would be commonly understood to designate the list on which the objector's name was to be found, the notice would be sufficient; otherwise not. This amendment, when made, will decide the case.

Case remitted for amendment.

The case was returned by the Revising Barrister with the following addition:—

There is only one *Golborne Street* in the borough of *Warrington*, and that is in the township of *Warrington*, and the description of the abode given would be commonly understood in the borough as designating the list for the township of *Warrington*.

Holker, Q.C. (*T. J. Barstow* with him) (*a*), urged that the amendment made did not answer the objection. "The list for *Golborne Street*" was not a description of a list of any township, nor had the Revising Barrister found that it was commonly understood to be such a description. His finding expressly referred to the

(*a*) *May* 3, *Coram Bovill*, C. J., *and Brett*, J. *Keating*, J., *Montague Smith*, J.,

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description of the *abode*, whereas, in fact, no abode was described in the notice, though that, no doubt, had not been made a specific ground of objection.

BOVILL, C.J. This case was virtually disposed of when last before the Court. The Court were then of opinion that if the description given would be commonly understood as designating the list on which the objector's name was to be found, this would be a sufficient notice. The case having been sent back for amendment, the Revising Barrister has returned it, with a statement that the description of the abode given would be commonly understood in the borough as designating the list for the township of *Warrington*—a statement which would be perfectly plain, but for the introduction of the word "abode." Looking, however, to the fact that in the notice referred to there is no description of the abode given, it is quite obvious that the only description given to which the Revising Barrister could mean to refer, must be the description given in the words "on the list of voters for *Golborne Street*," &c., and which formed the subject of the appellant's objection. The decision of the Revising Barrister will therefore be affirmed.

MONTAGUE SMITH, J. Not having been present at the former argument, I give no opinion.

BRETT, J. The description in the notice is no doubt an inaccurate one, and the only question is whether it is brought within the 101st section, so as to be "commonly understood." I think it is, and that the additional statement of the Revising Barrister brings the case

exactly within what fell from the Court when the case was last before us. 1870.

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Decision affirmed.

Attorney—For Appellant, *H. B. Farington*, for *W. Leader, Wigan.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

MICHAELMAS TERM, 1870,

AND

HILARY AND EASTER TERMS, 1871,

IN THE

THIRTY-FOURTH YEAR OF QUEEN VICTORIA.

TAYLOR, Appellant; THE OVERSEERS OF ST. MARY ABBOTT'S, KENSINGTON, Respondents.

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Nov. 11.

A. claimed the franchise as a lodger. He had rented lodgings of sufficient value, and for a sufficient time, where his wife and children lived, but he slept there only once or twice a week. The rest of his time he spent in rooms found for him by his employers, in the same house with an invalid of whom he had charge:—*Held*, that the residence in the lodgings first described was sufficient (*a*).

THE case stated:—

Samuel Thomas Taylor was of full age and not subject to any legal incapacity.

(*a*) See the next case.

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The said *Samuel Thomas Taylor* had duly claimed to have his name inserted on the register of persons entitled to vote for members to serve in Parliament for the borough of *Chelsea*, in respect of the occupation of lodgings within the said borough. To his claim was annexed a declaration in the form, attested and certified in manner prescribed by the Act for the Amendment of the "Representation of the People, 1867."

The said claimant had taken the lodgings aforesaid, and his wife and family had occupied them and resided in them during the twelve months immediately preceding the last day of *July* last past.

Under the circumstances, and for the reasons hereinafter stated, the claimant had slept in the lodgings aforesaid during the twelve months aforesaid in every week one night, and in some two nights only.

During the twelve months aforesaid the claimant had been employed as attendant upon a gentleman, who, though not an invalid in the ordinary sense of the word, suffered from so excessive an addiction to ardent spirits and tobacco, that his relatives and friends deemed it necessary that some one should be in constant attendance upon him, with the view, partly by example and partly by a judicious dilution of the spirits supplied to him, and diminution of the supply of tobacco, if not of checking the consumption, of at any rate diminishing the effect of his too great indulgence in strong drinks and tobacco.

All this supervision over the habits and tastes of the gentleman was to be exercised without his knowledge, and in order to enable the claimant to perform efficiently such his duties, and to enable himself at all hours of the day to throw himself in the way of the said

gentleman, and thus become his constant companion both at his meals, at home, and when he took his walks abroad, the friends of the said gentleman deemed it necessary and desirable that the claimant should lodge in the same house with the said gentleman, and did in fact take two rooms as lodgings for the said claimant at No. 22, *Porteus Road, Maida Hill,* that being the house where the said gentleman also lodged. With the exception of the few nights in each week when the said claimant slept at the lodgings in *Edge Terrace* as aforesaid, he slept in the said lodgings in *Porteus Road,* so provided for him by his employers as aforesaid.

Upon the occasions when the said claimant slept away from *Porteus Road* he always mentioned the fact to the landlord of the house in *Porteus Road* before he left.

It was contended on behalf of the claimant, that by such occupation of the lodgings, in respect of which he claimed, by his wife, and such residence therein by himself as aforesaid, he was duly qualified to have his name inserted on the register. The Revising Barrister held that such residence was not sufficient to qualify him, within the meaning of the 3rd sub-section of the 4th section of the "Representation of the People Act, 1867," and disallowed the claim.

If this decision were wrong, the name of the said claimant was to be inserted in the register; if right, the register was to remain as it was.

Casswell for the appellant. The residence at *Chelsea* is sufficient. The words of the stat. 30 & 31 *Vict.* c. 102, sect. 4, sub-sect. 3, are "Has resided in such lodgings during the twelve months," &c. Residence has

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been repeatedly defined. Thus in *Rogers on Elections* (*a*), "a permanent, unbroken dwelling in a particular place is not required to constitute residence; absence, no matter how long continued, if there be a power of returning at any time and an intention to return whenever it may suit pleasure or convenience, will not prevent a constructive legal residence."

[BRETT, J. May it not be suggested that the claimant had *bound* himself to be away four days a week?]

There is nothing in the case to support such a contention.

In *Powell* v. *Guest* (*b*), *Erle*, C.J., in his judgment said, "Now the doctrine appears to me to be laid down very correctly in *Elliott on Registration* (*c*). In order to constitute residence, a party must possess at the least a sleeping apartment, but an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence."

[WILLES, J. Suppose a man to have a lodging in the country as well as a house in *London*, and that he goes out of town to the former every week from the *Saturday* to the *Monday*. May he not be said to reside at either? If not, then every one who has a country house and a

(*a*) P. 85 of 9th ed.
(*b*) *Hopw. & Ph.* 149; 18 *C. B., N. S.* 72.
(*c*) 2nd ed. p. 204.

town house, and uses both from time to time, may have a difficulty in showing that he *resides* anywhere.]

In *Pryme's case* (*a*), the voter was Professor of Political Economy at *Cambridge*. He had a private residence about sixteen miles from *Cambridge*, but rented two rooms in *Cambridge*, which he occasionally occupied during the year. His vote for the borough of *Cambridge* was objected to on the ground of non-residence, but the Committee of the House of Commons held it good.

In *Clarke's case* (*b*), the voter had formerly lived at *Great Marlow*, but for three years past had lived in *London*, following his employment as an omnibus conductor, his wife and children continuing to live in his home at *Great Marlow*, for which he continued to pay the rates. During the three years he only slept four nights at *Marlow* at intervals. The Committee decided that his vote was good.

In *Whithorn* v. *Thomas* (*c*), though the Court disallowed the vote, it was not because there was not a sufficient dwelling or abiding stated in the case, but because the Court thought the residence merely colourable and not *bonâ fide*. The judgments, especially of *Coltman* and *Erle*, JJ., in that case are favourable to the present claim.

No counsel appeared for the respondents.

BOVILL, C.J. This case is scarcely distinguishable

(*a*) *Wolferstan & Dew*, 51, *Cambridge* election, 1857.

(*b*) *Barrow & Austin*, 83, *Marlow* election. See also *Ackroyd's case*, *Ibid.* 189, *Wigan* election.

(*c*) 1 *Lutw. Reg. C.* 125.

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from the ordinary case of two residences, one in town, one in the country. A merchant in the city, at the house where he carries on his business, has a bed-room and other accommodation, and makes use of it for several nights of the week, whenever he may find it convenient or necessary to stay for the despatch of letters or other business. That would surely not prevent his residence in the country or in another distant part of *London* being his residence. Here the claimant always had the option of returning when he pleased. He had not bound himself to reside anywhere else. The convenience for sleeping was found for him by the friends of the gentleman whom he attended, but he was not bound to sleep there. I think that the decision was wrong, and must be reversed.

WILLES, J. It seems that the claimant might, if he thought proper, when detained by business, illness, stress of weather, or other cause, sleep in the apartments provided by his employers, or, if he pleased, he need never sleep there at all. He was under no obligation to do so. It is then simply the case of a man having business premises and a bed-room in one place, and his wife and family in another. He cannot be said not to reside with his family merely because he sometimes sleeps at his place of business.

KEATING, J. I am of the same opinion. The claimant had a residence, within the meaning of the Act, where he resided with his wife and family. He had no other residence properly so called. If the other were in any sense his residence, it did not make the first one the less so.

BRETT, J. I am of the same opinion. It appears to me a clear case.

Decision reversed.

Attorneys—For appellant, *Shepheard & Son.*

BOND, Appellant; THE OVERSEERS OF ST. GEORGE, HANOVER SQUARE, Respondents.

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A. claimed the franchise as a lodger. He had rented lodgings of sufficient value, and for a sufficient time; but he stayed there only occasionally, and for a few days, sometimes a few weeks at a time. The rest of his time he lived in *D.*, where he kept an establishment all the year round:—*Held*, that the residence in the lodgings was sufficient.

THE case stated,—

At a Court held for the revision of the list of voters for the parish of *St. George, Hanover Square,* in the city of *Westminster,* the Revising Barrister decided that *Thomas Bond* was not entitled to have his name inserted in the register of voters for the said parish, against which decision the said *Thomas Bond* gave notice of appeal.

The Revising Barrister stated the following facts for the opinion of the Court:—

It was proved that the said *Thomas Bond* was of full age and not subject to any legal incapacity; that the said *Thomas Bond* had duly claimed to have his name inserted on the register as a voter, for members to serve for the city of *Westminster,* in respect of the occupation of lodgings in the parish of *St. George, Hanover Square,* aforesaid, and his notice of claim was as follows:—

Christian Name, &c.	Profession, &c.	Description of Lodgings.	Description of House in which Lodgings situate, &c.	Name, &c., of Landlord.
Bond, Thomas	Justice of the peace for the county of *Dorset*	4 rooms, 2nd floor	6, *Charles Street, Berkeley Square*	*John O'Hagan,* 3, *Pall Mall East,* Secretary

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and to his said claim was duly annexed a declaration in the form attested and certified in the manner prescribed by the "Representation of the People Act, 1867;" that the said *Thomas Bond* had duly and *bonâ fide* occupied, during the twelve months required by the said Act, the lodgings mentioned in his notice of claim, that is to say, that from a date prior to the last day of *July*, in the year 1869, he had been and still was a yearly tenant of the said lodgings, and that such tenancy could only be terminated by a six months' notice; that during the twelve months preceding the last day of *July* last past he had been the sole tenant of the said lodgings, and had occupied them separately; that the said *Thomas Bond* prior to and during the period of his occupation of the said lodgings as aforesaid, had occupied a house at *Tyneham*, near *Wareham*, in the county of *Dorset*, and that there he kept an establishment of servants all the year round, and that there he resided during such portions of the year as he was not in *London*; that the said *Thomas Bond*, when in *London*, resided in the lodgings aforesaid, during the twelve months immediately preceding the last day of *July* last past; and he had resided in his said lodgings during the following periods, that is to say: in the year 1869, from the 24th till the 28th of *September*; from the 10th till the 15th of *November*; and in the year 1870, from the 23rd of *April* till the 21st of *May*; from the 26th of *May* till the 31st of *May*; from the 9th till the 23rd of *June*; and from the 27th of *June* till the 4th of *July*.

It was contended, on behalf of the said *Thomas Bond*, that such occupation of, and residence in, the said lodgings, in respect of which he claimed, were sufficient to

qualify him to have his name inserted in the register. The Revising Barrister held, that such residence as aforesaid was not sufficient, and that the said *Thomas Bond* had not resided in the said lodgings for the period and in the manner enacted by the 3rd sub-section of the 4th section of the "Representation of the People Act, 1867," and disallowed his claim.

If the Revising Barrister was wrong in so deciding, the name of *Thomas Bond* was to be inserted in the register; if right, the register was to remain as it was.

Shield for the appellant. This case greatly resembles the one just argued (*a*); but the facts are here even more strongly in favour of the appellant. An idea seems to have been entertained that, because he had a place of residence at *Tyneham*, he *could* not be said to reside in *Charles Street*.

[WILLES, J. In the *Northallerton* Election Petition (*b*), a farmer had a small farm within the limits of the borough. On the land was a house, for which he paid the rates and taxes, and of which he was the exclusive occupier; but he allowed his sister to live there as his guest. He slept there only occasionally, and on those occasions his sister attended on him; and I thought, and decided, that though a slight case, it was really one of residence.]

[*Shield* was stopped by the Court.]

(*a*) See the preceding, *Taylor* v. *Overseers of St. Mary, Kensington*, *ante*, p. 421.

(*b*) *O'Malley and Hardc. Elect. Cases*, p. 171.

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No counsel appeared for the respondents.

BOVILL, C. J. It appears that the appellant was the sole tenant of the rooms in question, under terms to give six months' notice of his intention to leave. No one else, without his permission, could or did occupy. It is true that there was no wife or child to represent him as occupier; but he was sole tenant, and had the power of coming to the rooms as often as he pleased; which power he appears to have exercised, sleeping and staying there from time to time as is found in the case.

It is sufficient that there he resided. It is not necessary that the residence should be continuous and uninterrupted. The case, of course, is essentially different from that of a man who abandons his intention of returning. In fact, it comes to the illustration used by the Court in the preceding case, of a man possessing a town and a country residence. The possession of both at the same time is of common occurrence, and if unbroken residence were held to be intended by the statute, a man who had two such, and went occasionally to reside in either, might be held to have no residence at all for the purpose of voting. I, therefore, think that the decision of the Revising Barrister was wrong, and must be reversed.

WILLES, J. I am of the same opinion. The decision of the Revising Barrister amounts to this, that a man cannot have two residences.

KEATING, J. I am of the same opinion.

BRETT, J. In this case, the Revising Barrister having

found, as a fact, the occupation to be what is required by 30 & 31 *Vict.* c. 102, sect. 4, sub-sect. 2, the only question remaining is, was there a sufficient residence? *Erle*, C.J., in *Powell* v. *Guest* (*a*), adopted the language of *Elliott on Registration:* "In order to constitute residence, a party must possess, at the least, a sleeping apartment; but an uninterrupted abiding at such dwelling is not requisite. Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence." Here, the claimant is a tenant from year to year of rooms, including a sleeping apartment, with power at any time to return, and of his intention to return there is strong evidence. He is, therefore, within the definition of residence so laid down. That decision, moreover, has been long acted on, and must be taken to have been known as part of the law to the framers of this statute. I think, therefore, the decision must be reversed.

Decision reversed.

Attorneys—For Appellant, *Rogerson & Ford.*

(*a*) *Hopw. & Ph.* 155.

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In 30 & 31 *Vict.* c. 102, s. 5, the words "entitled either as lessee or assignee" (construed by reference to sect. 20 of 2 *Will.* 4, c. 45) mean the lessee or assignee of a lease of tenements capable of occupation, and do not apply to the *cestui que use* of a chattel rent charge.

J. S. claimed to vote in respect of an annuity or rent charge arising out of lands held for a term of more than 60 years, determinable on lives. *G. L.*, the settlor, being seised in fee of the lands, conveyed them to trustees, to the use of himself, for 50 years. (This term had determined.) Afterwards, for the term of 100 years, if certain persons should so long live. And "to the further use (*inter alia*) that *J. S.* (the claimant) should, during the said term of 100 years, receive out of the rents and profits a yearly rent charge of £10."

Held, that *J. S.* was neither "lessee" nor "assignee" within sect. 5 of 30 & 31 *Vict.* c. 102.

Quære, if the proviso to sect. 20 of 2 *Will.* 4, c. 45 is intentionally omitted from sect. 5 of 30 & 31 *Vict.* c. 102?

THIS was an appeal from the decision of the Revising Barrister for the south-eastern division of *Lancashire.*

The case stated:—*John Somerton,* described on the list of claimants to be inserted on the list of voters for the township of *Denton* as follows:—

Somerton, John	*Ashton Road, Denton*, near *Manchester*	Annuity or rent-charge, arising out of lands and buildings, held for a term over 60 years, determinable on lives	*Crown Point* and *Ashton Road, Denton. Charles Walker* and others, occupying tenants. *John Thornhill* and others, trustees

was duly objected to by *James Renshaw Cooper.*

The said *John Somerton* claimed to be entitled to have his names inserted in the register of voters for the said township of *Denton,* in respect of his interest under a deed of settlement, dated the 5th *January,* 1837, and made between *Gabriel Lupton,* of *Denton,* in the county of *Lancaster,* gentleman, of the one part; and *John*

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Thornhill, of *Denton* aforesaid, hatter, *Gabriel Lupton*, the younger, of *Denton* aforesaid, hatter, and *Robert Cooke*, of *Denton* aforesaid, shopkeeper, of the other part.

A copy of the deed accompanied, and was to be taken as part of the case; but the material facts, and the limitations of the deed, were shortly as follows :—

Gabriel Lupton, the settlor, was seised of an estate of inheritance in fee-simple in certain lands and hereditaments, in the said township of *Denton*.

By the before-mentioned deed he conveyed these lands and hereditaments to the said *John Thornhill*, *Gabriel Lupton*, the younger, and *Robert Cooke*, their heirs and assigns, for ever, to the uses and upon the trusts in the said indenture declared, *viz.*, "To the use of the said *Gabriel Lupton*, the elder, and his assigns, for and during the term of fifty years, if he the said *Gabriel Lupton*, the elder, so long live, and immediately after the determination of the said term of fifty years, determinable as aforesaid, and subject thereto from thenceforth for and during the term of 100 years, if *Mary Lupton*, *William Lupton*, brother of the said *Gabriel Lupton*, the elder (and other lives therein named, which said *cestuis que vie* were the several annuitants thereinafter mentioned and more particularly described), or any of them, should so long live." The said term of fifty years had determined since the date of the said indenture.

Then followed certain uses which were not material to the present case, inasmuch as they affected, and were for the benefit of persons since deceased, or not interested in the present case. Subject to the last-named and now expired uses, the deed then declared the following uses :—

"And to this further use, intent, and purpose, that

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John Somerton, of *Denton* aforesaid, hatter (the person claiming to be entitled to have his name inserted in the register), his executors, and administrators, shall thenceforth, during the said term of 100 years, determinable as aforesaid, have, receive, and take, by and out of the rents, issues, and profits of the said messuages, lands, and hereditaments hereinbefore mentioned to be hereby appointed, granted, or released, one annuity or yearly rent-charge or sum of £10 of lawful British money." Then followed similar uses, or gifts of different yearly sums in favour of other persons, who, or whose representatives, claiming in right of their ancestors or testators, or being husbands claiming in right of their wives, also seek to have their names retained on the register of voters. Such other persons had been duly objected to by the said *J. R. Cooper*, and their names were to be found in a "schedule annexed to the case." The said deed contained a trust for sale of the said lands, hereditaments, and premises, to be exercised on the determination of the said term of 100 years, so limited to the said *John Thornhill*, *Gabriel Lupton*, the younger, and *Robert Cooke*. The proceeds of the sale were to be distributed amongst the legal personal representatives of the said annuitants.

The deed contained no power of distress on any of the said settled lands and hereditaments, in case of default in payment of such annuities.

There were provisoes in the said deed in the following words:—

"Provided, and it is hereby declared, that if any of the said annuitants, including the widow of the said *James Lupton*, his or her executors or administrators, shall make sale or mortgage of his or her annuity under

the trusts of these presents, or any part thereof, such annuity shall thenceforth be forfeited, and be as an accumulation to the estate. Provided lastly, and it is hereby declared, that, notwithstanding anything hereinbefore contained, on the death of any of the said annuitants from time to time without leaving issue, his or her share or annuity shall not go to his or her executors and administrators, but in augmentation of the others' share or annuities."

It was admitted that the said yearly payments were, in each case, of the annual value of £5 and upwards.

It was objected, first, that the said yearly payment was not a rent-charge, but a chattel, and, therefore, not within the statutes of 8 *Hen.* 6; 2 *Will.* 4, c. 45; or 30 & 31 *Vict.* c. 102; so far as such statutes, or any of them, confer the right of voting on persons seised of lands or tenements for any estate in fee simple, or for lives, of the clear yearly value of 40*s.*; secondly, that by the terms of the said deed such yearly sum was to be paid out of the rents and profits of the said lands and hereditaments, and was not charged on the *corpus* of the estate, and, therefore, was not an estate arising out of land; thirdly, that the said *John Somerton* was not entitled within the 5th section of the "Representation of the People Act, 1867" (30 & 31 *Vict.* c. 102).

It was contended on behalf of the said *John Somerton* that he was entitled, as lessee, to a tenement for the unexpired residue of a term originally created for a term of sixty years, determinable on lives, of the clear yearly value of £5, over and above all rents and charges payable out of, or in respect of, the same, within the 5th sect. of the "Representation of the People Act, 1867" (30 & 31 *Vict.* c. 102).

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The Revising Barrister held and decided, that the said *John Somerton* was entitled to have his name inserted in the list of voters for the said township of *Denton*, in respect of the qualification stated in the said three columns of the register. A list of persons whose names were set out in the schedule annexed, were also duly objected to, and the Revising Barrister held and decided, that they were severally entitled to have their names retained on the said register, for the qualifications set opposite to their respective names, and described in the column of the said register; they being entitled, under the said deed of settlement, by virtue of similar uses, to that hereinbefore stated, though the amount of the yearly sums to which they were severally entitled was not in every case the same, and as their right to have their names retained on the said list of voters depended on the same points of law as those raised in the case of the said *John Somerton*, the appeals were consolidated.

If the Court should be of opinion that the said *John Somerton* was entitled to have his name retained on the said list of voters, then his name, and the names referred to and set forth in the said schedule, were to be inserted and remain on the said list; but if the Court were of a contrary opinion, then the names of the said *John Somerton*, and of the persons mentioned in the schedule, were to be erased from the said list.

Williams, Joshua, Q.C. (*J. Edwards* with him). The claimant is clearly not seised of a rent charge, but has merely a chattel interest. The question arises upon the words of sect. 5 of 30 & 31 *Vict.* c. 102. The first class indicated as "seised at law or in equity," refers

to interests of a freehold character. Then follow the words under which the claim is made, "or who is entitled either as lessee or assignee, &c."

[WILLES, J. The claimant can hardly be said to be a lessee or assignee.

BRETT, J. What do you take to have been the precise mode of shaping the claim?]

It is difficult to say. The Revising Barrister has not found distinctly what the qualification was, or given his *ratio decidendi*, but has mixed it up. The Legislature intended to convey by the words "lessee" the ordinary idea of a landlord on the one hand, and a tenant on the other. This is a chattel created by means of the Statute of Uses out of a freehold. Then the claimant does not fulfil the requirements of the Act. His qualification is not a freehold; he is not a lessee; he is not an assignee.

[BRETT, J. Is not this a term?]

Not in the sense of the Act of Parliament.

[BRETT, J. Is it a tenement?]

Perhaps so; but hardly one contemplated by the Act.

[WILLES, J. It would seem to be the object of the Legislature to put the term of sixty years on the same footing with a freehold.

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KEATING, J. Do you admit the claimant has the interest though not as assignee or lessee?

BRETT, J. The qualification in this Statute and the former one, the Reform Act, are identical. No change was made except in the value?]

That is so; and yet no one ever before attempted to raise this question. *Trotter* v. *Watson* (*a*), though not expressly in point, may be usefully referred to, where the claimant had been let into possession, and by contract was entitled to have a lease for ninety-nine years upon the fulfilment of certain conditions thereafter to be performed, and the Court held, that as he was not in a position to perfect or enforce the lease, he was not entitled to vote within the meaning of this Act of Parliament. The Court there seem to have been of opinion that to the acquisition of the franchise under the words in question, it was essential that there should be a created term.

[BRETT, J. If the holding be *as* assignee, will not that do? as in the case of the words "*as* owner," and "*as* tenant," pointing to the *actual* occupation, and not the *right* to occupy; for the Revising Courts cannot try a question of title (*b*).

WILLES, J. The word "assignee" seems most dangerous to you, for though, according to your argument, this man, not being lessee nor assignee, cannot vote, yet

(*a*) *Ante*, p. 216; *S. C.*, *L. R.* 4 *C. P.* 434.

(*b*) *Rogers on Elections* (9th ed.) p. 48.

if he assign to another the assignee may! which is *ad absurdum.*]

The words must refer to a lease in the ordinary sense of the word. The Act could not be intended to authorise the creation of chattel interests for the manufacture of votes.

No counsel appeared for the respondents.

BOVILL, C. J. The language of sect. 20 of 2 *Will.* 4, c. 45, throws some light, I think, on the 5th section of the Representation of the People Act, 1867. It will be found that sects. 5 and 6 of the last Act are substantially re-enactments of sects. 18, 19, and 20 of the former Act, except as to value; and looking back, therefore, to the Act of 2 *Will.* 4, c. 45, I am of opinion that the person entitled as lessee, or assignee, under the Representation of the People Act, 1867, must be lessee or assignee of a corporeal tenement. It is clear that the claimant in this case is not seized of any lands or tenements of freehold, copyhold, or other tenure, within the earlier part of the 5th section, and therefore the question resolves itself to this, whether he can claim to be entitled either as lessee or assignee of any tenement within the meaning of the latter branch of the 5th section of the Representation of the People Act, 1867? No doubt he had a tenement, but nothing that was corporeal or capable of being the subject of occupation, as was required by the 2 *Will.* 4, c. 45. He is only the *cestui que use* of a chattel rent-charge, and therefore, as it seems to me, in no sense such lessee or assignee as the Representation of the People Act 1867, intended. The Act uses the

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term "lessee" as distinguished from a person who is seized of the lands or tenements for a freehold interest; and the term assignee means, I think, the assignee of a lease which had been previously granted of similar lands or tenements. Under the circumstances the claimant cannot be entitled as lessee or assignee within the meaning of the latter part of the 5th section of the Representation of the People Act, 1867, and the decision of the Revising Barrister must be reversed.

WILLES, J. I am of the same opinion. If the 5th section were read by itself, and no light were thrown on it from any other source, I should be inclined to think that the person who framed the Act intended by the latter alternative in the section to express generally that the being entitled to an interest in the unexpired residue of a term originally created for not less than sixty years, should, for the purposes of the franchise, be considered equivalent to being seised of a freehold interest, and that the words "lessee," or "assignee," were introduced, not for the purpose of limiting the class of persons entitled, or the sort of interest in respect of which they should be entitled, but of enumerating all persons occurring to the mind of the framer of the Act as likely to fall within the category of persons entitled to the property specified in the section other than those seised at law or in equity. Such a construction would, however, sacrifice the precise and proper meaning of the words "as lessee or assignee" to the supposed intention of the Legislature; and, on the other hand, we must look not merely to the language of the section, but also to its history, constituting, as it does, the history of the legislation, by which, in extension of the right which for-

merly belonged to freeholders only, persons are now entitled to the county franchise in respect of certain chattel interests.

Turning back to the Reform Act, 2 *Will.* 4, c. 45, we find the provisions of sect. 5 of 30 & 31 *Vict.* c. 102, are not new, but are to be found almost word for word in sects. 19 and 20 of the former Act. In that Act we find certain limitations of the right superadded, and illustrations of the meaning of the Legislature, which, plainly show it was not intended to confer the right to vote on persons possessing merely a chattel rent-charge. To show that, it is only necessary to call attention to the alternative in sect. 20 of the Act of 1832, which after providing for the cases of lessees and assignees of the residues of terms of sixty and twenty years, proceeds thus: "or who shall *occupy* as *tenant* any lands or tenements for which he shall be *bonâ fide* liable to a yearly rent," &c. Here the words "lessee or assignee" are not used, but the word "tenant" is introduced, and the word "tenements" is distinctly spoken of as a subject-matter, which is capable of being occupied by a tenant. This becomes still clearer when the proviso (which, by the way, is not repeated in the Act of 1867, an omission which may give rise to further litigation), at the end of the 20th section, is looked at, that "no person, being only a sub-lessee, or the assignee of any under-lease, shall have a right to vote in such election in respect of any such term of sixty years or twenty years as aforesaid, unless he shall be in the actual occupation of the premises." Nothing can be clearer to show that the subject-matter there referred to must be something that may be the subject of tenancy and occupation; in short, "premises," in the

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popular sense of the word. With the light thrown on sect. 5 of the Act of 1867, by a comparison with the 20th section of the Act of 1832, it is clear that the words "lessee or assignee" are not applicable to a chattel rent-charge like this, and looking at the practice since the Reform Act of 1832, which has been not to give a vote for the county to the owner of a chattel rent-charge, I arrive at the conclusion that the words "lessee or assignee," in the 5th section of the Act of 1867, are not a mere ignorant attempt to place a chattel interest of a particular value on the same footing in *all* respects as a freehold interest, but that they are words of limitation, and do confine the persons entitled to vote to persons who, in ordinary parlance, are lessees or assignees. With regard to the difficulty thrown out in the argument, as to whether a chattel rent-charge, having been created and assigned, the assignee would not be entitled to a vote, it was, perhaps, plausible, but there is, after all, nothing in it. The obvious answer is, that such a man would certainly be entitled to the rent-charge as assignee, but he would not be an assignee of such an interest as gave a vote to his assignor, and, therefore, would not be entitled to a vote. *Nemo dat quod non habet.*

KEATING, J. I am of the same opinion, though I have arrived at it with considerable reluctance. I had hoped that the decision in favour of the claim might have been supported on the ground that the claimant being entitled to a tenement of the required value, though only as grantee, might yet be considered an assignee within the meaning of the section. But on reflection, I am satisfied that in this section of the Act of 1867, it was not the object of the Legislature to alter at

all the nature of the subject-matter in which the interest was to consist, from what had been provided by sect. 20 of the Act of 1832. The words of the latter section, and of the 5th section of the Act of 1867, are identically the same, and the only construction of which the former section is capable, does limit the words "lessee or assignee" to the lessee of an interest in a corporeal tenement, and the assignee of such a lessee. In other words, the intention and effect of sect. 5 of the Act of 1867 seem to be simply to reduce the value of the qualification from £10 to £5, and not to alter the nature of the qualification.

I therefore think, under the circumstances, that we must confine the words "lessee or assignee" to that to which before 1867 they were confined, viz., the word "lessee" to a lessee of something capable of occupation, and the word "assignee" to the assignee of such a lessee.

BRETT, J. I have had considerable doubt upon this case. I thought at first that, though the section says, "is entitled either as lessee or assignee," and the present claimant is neither, it might be possible to read the words as equivalent to "as if he were" lessee or assignee. But further consideration has established, beyond doubt, that sect. 5 of the Act of 1867 carries the matter no farther than sect. 20 of the Act of 1832. The first part of the 5th section corresponds to sect. 19 of the Act of 1832, and the latter part describes the same interests as sect. 20 of that Act. It omits one interest, namely, the £50 tenancy in counties, but in other respects it is the same. I cannot doubt that the only intention of sect. 5 was to reduce the value of the qualify-

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ing interest from £10 to £5, so that the question arises whether an interest like the present was comprised in the language of sect. 20 of the Act of 1832. Looking at that section, and the interests there described, I come to the conclusion that it was only intended to comprise lessees or assignees of a lease, and did not apply to a chattel rent-charge. I come to that conclusion for the reasons stated by my brother *Willes*. I cannot think that this is an interest contemplated in sect. 20 of the Act of 1832, and, so far as my experience (a rather long one of the Revising Courts) goes, it has never been contended that it was.

Judgment reversed.

Attorneys—For the Appellant, *Horne & Hunter*.

CROSS, Appellant; ALSOP, Respondent.

Nov. 18.

The operation of 32 & 33 *Vict.* c. 41, s. 19, which enacts "that the overseers, in making out the poor-rate, shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, *and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid*," is not general, but applies only where the overseers have agreed in writing with an owner to receive the rates from him in accordance with sect. 3, or where there has been an order of vestry for rating owners instead of occupiers, in accordance with sect. 4.

A. occupied as sole tenant two rooms, not structurally severed from the rest of the house, but was rated, jointly with others, for the whole house:—*Held*, that (the rooms so occupied by *A.* not being *separately* rated) *A.* was not the occupier of a "dwelling-house" within sects. 3 and 61 of 30 & 31 *Vict.* c. 102, and that sect. 19 of 32 & 33 *Vict.* c. 41, had no application.

AT a Court held for the revision of the list of voters for the city of *London*, before the Revising Barrister for the said city, *Henry Daniel Alsop*, of, &c., duly objected

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to *Charles Cross* (hereinafter called the appellant) being retained on the list of the persons entitled to vote for the election of members for the city of *London*, in respect of the occupation of dwelling-houses, under the following circumstances:—

The appellant was, on the last day of *July*, 1870, and had during the whole of the preceding twelve calendar months been an inhabitant occupier, as sole tenant, of two rooms on the second floor in a house, No. 6, *Great Montague Court*, in the parish of *St. Botolph Without, Aldersgate*, in the city of *London*, as his dwelling.

This house is one of which there are many in the city of *London*, formerly used as the dwelling-house of one family, but now wholly let out in separate portions to persons who occupy the same as their respective dwellings, or for trade, or business offices.

Such rooms occupied by the appellant, being part of a house, were not so structurally severed from the rest of the building as to constitute, of themselves, a house according to the legal definition of a dwelling-house, as laid down in the case of *Cook* v. *Humber* (*a*), decided by Her Majesty's Court of Common Pleas, with reference to the "Act to Amend the Representation of the People," 2 *Will.* 4, c. 45.

The part of the house occupied by the appellant was let to him, as tenant, from week to week, at a weekly rent of 4*s.* 6*d.*, under an agreement that the owner, who was his landlord, should thereout pay all the rates on behalf of the appellant in respect of the premises occupied by him, the rent being higher than it would have been if the appellant were personally to pay the rates to the collector.

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.*, 33.

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The rooms were let to the appellant unfurnished, and no attendance was provided by the landlord, neither was any control reserved to, or in fact exercised by, the landlord over the same. The appellant alone, and to the exclusion of the landlord, had the keys of the doors of his rooms; he also had a key to the door of the house opening into the street, and enjoyed under his demise all such easements and rights of way as gave him an independent occupation of the part of the house so demised to him as aforesaid.

The landlord retained no part of the house in his occupation, and the two tenants occupying the remaining parts of the house occupied their several parts in like manner as the appellant.

At the time of the passing of the "Representation of the People Act, 1867," there were no special enactments as to rating in force in the parish.

The overseers of the parish had agreed with the owner to collect the rates from him, and had, in making out the poor-rate, entered in the occupier's column of the rate-book the name of the appellant, and the other two tenants, against the number of the said house, and in the appropriate columns in line with the said names, the name of the owner, the rental, the rateable value of £14 of the whole house, and rate in the pound, alone appeared.

No separate sum, as rating or assessment in respect of the part of the house occupied by the appellant, was carried out opposite to the name of the appellant, or in respect of the parts respectively occupied by the other tenants.

Both the rates and the rent had been duly paid, and all other requisites not herein specifically men-

tioned, to entitle the appellant to be retained on the list of voters as an inhabitant householder, were duly proved.

Under the above-mentioned circumstances, it was contended by the objector that the appellant's name should be struck off the said list on the following grounds, namely,—1st, That the tenement occupied by the appellant was not a part of a house occupied as a separate dwelling, and separately rated to the relief of the poor, within the meaning of the "Representation of the People Act, 1867," by reason of its not being structurally severed from the rest of the house, and not being in fact separately rated; 2nd, That such tenement was not a rateable hereditament within the meaning of the "Poor Rate Assessment and Collection Act, 1869;" 3rd, That it had been decided by the Court of Common Pleas, in the case of *Hains* v. *Cuthbertson* (*a*), that such an occupier as the appellant was entitled to be registered as a lodger within the meaning of the "Representation of the People Act, 1867," and therefore could not be entitled to be registered as an occupier.

On behalf of the appellant it was argued that, previous to the case of *Cook* v. *Humber* (*b*), in construing 2 *Will.* 4, c. 45, Her Majesty's Court of Common Pleas had repeatedly decided that a person occupying separately, in the manner this appellant occupied, part of a house, was entitled to be placed on the register: that the case of *Cook* v. *Humber* (*b*) had only decided that the true test whether a part of a house was a house within the meaning of the last-mentioned Act, was not the manner of its occupation, but that the part should be structurally severed from the rest: that the "Repre-

(*a*) *L. R.* 4 *C. P.* 528 (note).
(*b*) *K. & G.* 413; *S. C.*, 11 *C. B., N. S.* 33.

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sentation of the People Act, 1867," which was passed after the decision of *Cook* v. *Humber* (*a*), had made separate occupation, not structural severance, the test, when accompanied by separate rating, as to whether part of a house used as a dwelling conferred the franchise or not: that here the appellant occupied part of a house as a separate dwelling, within the meaning of the last-mentioned Act: that structural severance was not, but that such separate occupation as that of the appellant was, the test of the rateability of an occupier of part of a house: that this appellant was legally rateable as an occupier, in respect of the tenement he occupied, and that, therefore, it was a rateable hereditament within the meaning of the "Poor Rate Assessment and Collection Act, 1869:" that he was rateable only for what he did occupy, and therefore was not rateable, either solely or jointly, in respect of the whole house, but by virtue of the last-mentioned Act he must be deemed to be duly, that is separately, rated for the tenement he occupied, and was entitled to every qualification and franchise depending upon such rating: that the decision of the Court of Common Pleas, in *Hains* v. *Cuthbertson* (*b*) was given after hearing the cross appeal in *Cuthbertson* v. *Hains* (*c*), where the facts were insufficiently stated.

The Revising Barrister held, that, though to the best of his judgment, the appellant occupied part of a house, as a separate dwelling, within the meaning of the words of the 61st section of the "Representation of the People Act, 1867," and was legally separately rateable for that part, and so far as regarded his

(*a*) *K. & O.* 413; *S. C.*, 11 *C. B., N. S.* 33.

(*b*) *L. R.* 4 *C. P.* 528 (note).

(*c*) *Ante*, p. 184; *S. C.*, *L. R.* 4 *C. P.* 525.

right to the franchise, the "Poor Rate and Assessment Act, 1869," saved the same, either notwithstanding, or in consequence of the overseers having so inserted his name on the rate-book as aforesaid, or notwithstanding they had omitted to rate him separately for the tenement he occupied, yet that, being of opinion that Her Majesty's Court of Common Pleas had, in the said case of *Hains* v. *Cuthbertson*, decided that the status of such a tenant as the appellant was that of a lodger, not of an occupier, within the meaning of the "Representation of the People Act, 1867," he must allow the objection, and accordingly struck the appellant's name off the list.

The Revising Barrister also, under similar circumstances (*mutatis mutandis*), and on the same points of law, struck the names of other persons thereunder written off the list of voters for the city of *London* as occupiers, all of whom had been duly objected to by the said *Henry Daniel Alsop*, and all of whom occupied rooms, or a room, in like manner as the appellant, as their dwelling, and which their respective tenements were the qualifications, intended to be designated in the third column in the lists. The Revising Barrister consolidated the appeals.

Sir G. Honyman, Q. C. (*F. M. White* with him), for the appellant. The objection to the vote, which the Revising Barrister held to be fatal, is founded on a misconception of the case of *Hains* v. *Cuthbertson* (*a*). That case was not a decision, as the Revising Barrister seems to have supposed it was, on the general question of what constitutes a lodger.

(*a*) *L. R.* 4 *C. P.* 528 (note).

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[BOVILL, C. J. The question whether the claimant in that case was a lodger, was never submitted for our decision.]

It was not. The franchise there claimed was no doubt the lodger franchise; but the Revising Barrister appears to have thought that the claimant was precluded from relying on that qualification, because he had claimed to be rated as an occupier. In that the Court held he was wrong, and, indeed, the respondent's counsel himself admitted that he could not support the Revising Barrister's decision (*a*).

Putting aside that case, therefore, two questions arise,—First, whether the appellant occupied "part of a house as a separate dwelling," within sect. 61 of the 30 & 31 *Vict.* c. 102. Secondly, whether the 32 & 33 *Vict.* c. 41, cures the defect in the appellant's qualification arising from his not being separately rated.

[The argument on the first point is omitted, as there was no decision upon it.]

Secondly, the appellant was the occupier of a hereditament, for which he was separately rateable, and the 32 & 33 *Vict.* c. 41, s. 19, cures, for the purpose of the franchise, any defect in the rating.

(*a*) By direction of the Lord Chief Justice, the special case in *Hains* v. *Cuthbertson* was brought into Court, when his Lordship, after reading it, again remarked, that whether the claimant was a lodger was not the question submitted to the Court.

[The case of *Hains* v. *Cuthbertson* was not reported in this series because the counsel for the respondent virtually declined to argue the only question it raised, *viz.*, whether, on the facts therein stated, the Revising Barrister was bound as matter of law to hold, as he did, that the claimant, having claimed to be rated, could not be qualified as a lodger.]

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That the appellant was an occupier, rateable within the 43 *Eliz.* c. 2, is decisively shown by what fell from the Court in *Stamper* v. *The Overseers of Sunderland* (*a*). Bovill, C. J., there said, "Upon the facts submitted for our consideration in this case, neither the owner nor the landlord, nor any person representing him, resides in or occupies any part of the house, and that has always been considered a material circumstance in determining whether the different parts of a house are to be considered as separate and independent dwellings or tenements; and as each tenant of a room here has the sole and exclusive occupation and control over it, although he has the use of the other parts of the house in common with the other tenants, he must, I think, be considered the occupier of a separate tenement for rating purposes. Indeed, unless this be so, there would be no person who could properly be described as the occupier. I think, therefore, that under the statute of Elizabeth, and but for the exception in the 7th section in the Act of the last session (30 & 31 *Vict.* c. 102), these separate occupiers of rooms would be liable to be separately rated to the relief of the poor." As regards the exception in the 7th section of the 30 & 31 *Vict.* c. 102, to which Bovill, C. J., there referred, it has no application to this case; whereas, in the case before him (*Stamper* v. *The Overseers of Sunderland* (*a*)), it directly applied. There it applied, because at the time when the 30 & 31 *Vict.* c. 102 passed, the provisions of the 13 & 14 *Vict.* c. 99 had been adopted in the parish. Here it does not apply, because, when the 30 & 31 *Vict.* c. 102, passed, those provisions had not been

(*a*) *L. R.* 3 *C. P.* 388.

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adopted in the appellant's parish, nor (as the case expressly finds) was any special enactment in force as to rating.

The appellant, then, is a rateable occupier within the 43 *Eliz.* c. 2, and is not within the exception in 30 & 31 *Vict.* c. 102, s. 7. He is also, it is submitted, an occupier within sect. 30 of the 2 *Will.* 4, c. 45; for, looking to the fact that the two representation Acts are to be read together, the operation of sect. 30 must extend to the franchises given under the new Act, as well as to those under sect. 27 of the old.

The substantial question, however, comes to this. The appellant being the occupier of a rateable hereditament, is he not by virtue of sect. 19 of the 32 & 33 *Vict.* c. 41, duly rated for the purpose of the franchise, and thereby entitled to the vote? Sect. 19 enacts: "The *overseers*, in making out the poor rate, *shall, in every case, whether the rate is collected from the owner or occupier*, or the owner is liable to the payment of the rate instead of the occupier, *enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid*; and if any overseer negligently or wilfully, and without reasonable cause, omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall, for every such omission or misstatement, be liable on summary conviction to a penalty not exceeding two pounds; provided that any occupier whose name has been omitted, shall, notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depend-

ing upon rating, in the same manner as if his name had not been so omitted."

[BOVILL, C.J. Do you contend that sect. 19 applies where neither the provisions of sect. 3 nor of sect. 4 have been complied with? Here there is neither an agreement in writing within sect. 3, nor an order of vestry within sect. 4.]

The section is perfectly general in its terms, and expressly provides for the entry of the occupier's name in the rate-book "whether the rate be *collected* from the owner or occupier." Its terms are not restricted to the case of the owner being "*liable* instead of the occupier."

[BOVILL, C.J. Do you say sect. 19 applies even when the owner is *illegally* rated?]

Here the owner is not rated.

[BOVILL, C.J. Who do you say is?]

Apparently the occupiers. *Wright* v. *The Town Clerk of Stockport* (*a*). The appellant being rated to the whole, is rated to the part he occupies, and for the purpose of the franchise sect. 19 expressly cures any defect in the rating.

Giffard, Q.C. (*Beasley* with him). First, the appellant did not occupy a "dwelling-house" within sect. 61 of the 30 & 31 *Vict.* c. 102, since he did not occupy

(*a*) 1 *Lutw.* 32; *S. C.*, 5 *M. & G.* 33; 7 *Scott's N. R.* 561.

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part of a house "as a separate dwelling" within the meaning of that section.

[This branch of the argument is omitted, as it led to no decision.]

Secondly, to constitute a "dwelling-house" within sect. 61, the "part of a house occupied as a separate dwelling," must also be "separately rated," so that by the express terms of that section separate rating forms a *part of the qualification*. Here the appellant is jointly rated with the other occupants for the whole house, and not separately for the part which he occupies. Not having claimed to be separately rated, he necessarily rests his case on "The Poor Rate Assessment and Collection Act, 1869" (32 & 33 *Vict.* c. 41). But that Act does not assist him. That Act was not intended to do away with the necessity of separate rating where the franchise is claimed for parts of houses. Moreover, the operation of sect. 19 is limited to cases where an agreement in writing, such as sect. 3 contemplates, has been entered into between an owner and the overseers, or where an order of vestry has been made for rating owners instead of occupiers, in accordance with sect. 4. Here there has been neither order of vestry, nor agreement in writing, and apart from the necessity of writing, an agreement which satisfies sect. 3 must be one of a specific character. It is said, indeed, that sect. 19 is of general application, and, in support of that assertion, reliance has been placed on the words "whether the rate is collected from the owner or occupier," but that, it is submitted, only means "collected under the previous provisions." And "the rate" means the rate for the particular premises occupied by the person claiming the franchise, whereas here there is no such rate, but

only a rate for the entire building. He referred also to sect. 12.

BOVILL, C.J. The overseers of the parish have not thought fit to pursue the provisions of "The Poor Rate Assessment and Collection Act, 1869," and the parties have not been brought within it. The third section of that Act enables the owner to enter into an agreement in writing with the overseers, to become liable to them for the poor rates assessed in respect of the hereditaments, and certain advantages are to accrue to the owner when he has entered into such an agreement—that is to say, the overseers may allow him a commission. The fourth section contains powers authorizing the vestry of the parish to order owners of hereditaments to which sect. 3 extends, to be rated to the poor rate in respect of such hereditaments, instead of the occupiers. Now, in the present case, there was no agreement within the meaning of sect. 3, but simply an agreement to collect the rates from the owner. The statement in the case is, that "the overseers of the parish had agreed with the owner to collect the rates from him." It is not clear what is the meaning of that statement, but evidently the agreement was not an agreement in writing, such as is required by sect. 3; neither was there an order of the vestry under sect. 4. The greater part of the subsequent provisions of "The Poor Rate Assessment and Collection Act, 1869," including sect. 19, are based on the presumption that the provisions in either sect. 3 or sect. 4, will be carried out. It follows, therefore, that the earlier part of sect. 19 has no application to the present case, and with respect to the proviso in the latter part of the section, that

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applies only where the occupier's name has been omitted from the rate, which is not the present case, as here the name of the occupier was inserted. The effect, therefore, is, that "The Poor Rate Assessment and Collection Act, 1869," has no application, and the case of the appellant is thrown back upon sect. 61 of "The Representation of the People Act, 1867." By that section the part of the house occupied must be separately rated to the relief of the poor; instead of that, there was here a joint rating of all the occupiers in respect of the whole of the house. That appeared to be the nature of the rating from the statement in the case, and it has been confirmed by the rate-book, which has been produced (*a*). On these grounds I think the appeal must be dismissed, and therefore it is not necessary to go into the other questions, which have been argued.

WILLES, J. I am of the same opinion, though not on the grounds on which the Revising Barrister has relied. I think he has mistaken the case of *Hains* v. *Cuthbertson* (*b*), which did not decide the point he supposed. Assuming for the purpose of our decision, that the appellant would have been in other respects entitled to the franchise if rated so as to entitle him, I think it is clear he has not been so rated. The Act of 1867 gives the franchise to the occupier of part of a house, provided he occupies it as a separate dwelling, and it is separately rated. Was, then, the subject-

(*a*) The rate-book being produced, it appeared that there was a blank under the heading "amount of rate assessed upon and payable by the owner instead of the occupier." See judgment of WILLES, J., *post*, p. 457.

(*b*) *L. R.* 4 *C. P.* 528 (note).

matter of the appellant's occupation separately rated? The Revising Barrister has correctly described the rating, which was a rating of the appellant, and the two other tenants of the house jointly, in respect of the whole house, and not a separate rating of them in respect of the parts they respectively occupied. It was a rating of *them*, and not of the owner, since otherwise the blank in the column headed "Amount of rate assessed upon and payable by the owner instead of the occupier," would have been filled up. I am clearly of opinion that there was no separate rating of the appellant within the 30 & 31 *Vict.* c. 102, s. 61, and, consequently, that unless his case be aided by "The Poor Rate Assessment and Collection Act, 1869," he has no right to the franchise claimed.

It is said, however, that sect. 19 of that Act aids him. That that might seem so at first sight to a person who read the section by itself, I can understand, though indeed he would hardly think it, after reading the proviso. I think he would be led to infer that the section must be what, on examination, it turns out, *viz.*, a mode of carrying out and giving effect to previous provisions. At first sight, indeed, the proviso looks like an enactment, that no rating at all shall be necessary to the franchise. But if that had been the intention of the Legislature, the mode of expressing it would not have been by means of a proviso, which deals with an omission by the overseers of an occupier's name from the rate-book, and provides against his franchise being prejudiced by that omission, but by a plain enactment, that from henceforth the man, who has hitherto been entitled to the franchise when rated, shall be entitled to it, whether rated or not. That the Legis-

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lature did not intend to do away with the condition of rating altogether is obvious from the earlier part of sect. 19, which enacts, "that the overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid." Reading that language in connection with the previous provisions, I think the words "whether the rate is collected from the owner," refer to cases where a written agreement has been entered into within sect. 3 (which here has not been), and the words "or the owner is liable to the payment of the rate instead of the occupier," to the case where an order of vestry has been made under sect. 4 (which also here has not been). But in the ordinary case, where the occupier is the person liable to poor rate, and where neither the machinery of sect. 3, nor that of sect. 4, has been put in force, I think sect. 19 has no application, the object of that section being to prevent an occupier having his right to the franchise prejudiced by the rate being made payable by the owner, and by the omission of the occupier's name from the rate-book.

I may add, that I am not at all satisfied that this statute was meant to deal, as contended by the appellant, with the case of persons occupying parts of dwelling-houses not separately rated.

As regards the case before us, from the statement therein, that "the overseers had agreed with the owner to collect the rates from him," the Revising Barrister

MATHER, Appellant; OVERSEERS OF ALLENDALE, Respondents.

Nov. 22.

THE case stated that, at a Court held by the Barrister appointed to revise the list of voters for the county of *Northumberland*, the name of *John Clemitson* appeared upon sheet IV of the lists thereunto annexed (*a*), being fac-similes of the lists actually pub-

In the published lists of voters for a county, the persons entitled in respect of *occupation* were arranged in a separate alphabetical list, after a similar list of those entitled in respect of *property*. These two lists were on five sheets of paper, the first list ending in the middle of Sheet III. At the top of Sheets I, II, III was a proper heading for persons entitled in respect of *property* situate in the parish. In the middle of Sheet III the list of persons entitled in respect of *occupation* commenced under a proper heading; but by a printer's

(*a*) The lists annexed to the case (as above mentioned) consisted of five sheets (respectively numbered Sheet I, Sheet II, &c.).

Each sheet had the following heading (*the headings to Sheet IV and Sheet V being interpolations of the printer*):

SHEET (*giving th number*).
Southern Division of the County of Northumberland (to wit).

The List of Persons Entitled to Vote in the Election of Knights of the Shire for the Southern Division of the County of Northumberland, in respect of Property situate in the PARISH OF ALLENDALE.

Overseer's objections.	Christian name and Surname of each voter at full length	Place of abode.	Nature of Qualification.	Street, lane, or other like place in the township where the Property is situate, or Name of the Property, or Name of the Tenant.

Below this heading on Sheets I, II, III, the names of voters in respect of property were alphabetically arranged (with their abodes, nature of qualifications, &c., in the appropriate columns) commencing on Sheet I with the name of "Allison, William," and ending with "Wilson, Henry" on the middle of Sheet III. Below "Wilson, Henry," on Sheet III, a line was drawn, and under it there was the following heading:—

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and Collection Act, 1869," sect. 19. At first sight, I thought that section did assist him; but, on further consideration, I am of opinion that it does not, but that its operation is confined to cases where an agreement in writing has been entered into between the overseers and the owner in accordance with sect. 3, or where the owner himself has been rated by an order of the vestry under sect. 4. Sect. 19, therefore, does not assist the appellant, and, if not, he must fail as not being separately rated.

BRETT, J. The appellant is not within sect. 3 of "The Poor Rate Assessment and Collection Act, 1869," because no such agreement has been made between the owner and the overseers as that section contemplates. He is not within sect. 4, because the owner has not been rated as therein provided. It follows that he is not within sect. 19. The first branch of that section should be read thus, that although the rate is collected from the owner, pointing to sect. 3, or the owner is liable to the payment of the rate instead of the occupier, pointing to sect. 4, the overseers are to enter the occupier's name in the rate-book. As regards the proviso, that only applies where the overseers have omitted that which, under the earlier part of the section, they ought to do. The appellant is therefore not within that section, and he has not satisfied sect. 61 of "The Representation of the People Act, 1867," because he is not separately rated.

Decision affirmed without costs.

Attorneys—For Appellant, *Travers Smith & De Gex.*
For Respondent, *Harper, Broad, & Munby.*

MATHER, Appellant; OVERSEERS OF ALLENDALE, Respondents.

Nov. 22.

THE case stated that, at a Court held by the Barrister appointed to revise the list of voters for the county of *Northumberland*, the name of *John Clemitson* appeared upon sheet IV of the lists thereunto annexed (*a*), being fac-similes of the lists actually published.

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SHEET (*giving th number*).
Southern Division of the County of Northumberland (to wit).

The List of Persons Entitled to Vote in the Election of Knights of the Shire for the Southern Division of the County of Northumberland, in respect of Property situate in the PARISH OF ALLENDALE.

Overseer's objections.	Christian name and Surname of each voter at full length	Place of abode.	Nature of Qualification.	Street, lane, or other like place in the township where the Property is situate, or Name of the Property, or Name of the Tenant.

Below this heading on Sheets I, II, III, the names of voters in respect of property were alphabetically arranged (with their abodes, nature of qualifications, &c., in the appropriate columns) commencing on Sheet I with the name of "Allison, William," and ending with "Wilson, Henry" on the middle of Sheet III. Below "Wilson, Henry," on Sheet III, a line was drawn, and under it there was the following heading:—

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lished (and which were to form part of the case). No objection was made to the said *John Clemitson's* right to vote. The said *John Clemitson* was entitled to be placed by the overseers upon the list of persons qualified to vote, by reason of the occupation of lands or tenements of the rateable value of £12 or upwards per annum. He was not upon the register of the previous year, nor entitled to vote otherwise than as an occupier of lands or tenements, of the rateable value of £12 or upwards per annum.

The said *John Clemitson* was so placed upon the *written* list of £12 occupiers sent by the overseers to the printer. The heading upon sheet IV was interpolated by the printer without instructions, and the said sheet was published by mistake by the overseers, with the heading thereto attached, and plainly visible. The sheets were fixed in the places of publication, one upon the other, No. 1 being outermost, and the others following in the order of number, and they were attached together by the left upper corner, so that, to a person turning over the upper to look at the lower sheets, no

mistake, the heading at the top of Sheets I, II, III was continued at the top of Sheets IV and V.

No one objected, nor did it appear that any one was misled.

The Revising Barrister, however (holding it misleading), refused to amend, and expunged all names below the interpolated heading.

Held, that it could not have misled a reasonably careful man, and the Revising Barrister ought to have amended.

No. 4.

Voters as Occupiers of Rateable Value of £12 or upwards— (Per Overseer's Return.)

Underneath this heading, a fresh alphabetical list (with the abodes, &c., in the appropriate columns, and in which the "nature of qualification" was in every case stated as "house and land"), commenced with the name of "Adamson, John," and continued on Sheet III to "Chester, Joseph." Then, on Sheet IV, the first name was "Clemitson, John," that and the names which followed it appearing under the headings interpolated, as above-mentioned, at the top of Sheets IV and V by the printer. The list continued in regular alphabetical order to "Whitfield, Shield," at the bottom of Sheet V. A line was then drawn, and under it appeared the signature of the overseers.

portion of the heading would be covered. There was no evidence to show whether any person had, in fact, been deceived by the publication of the name of the said *John Clemitson* upon the said lists, in manner and form aforesaid.

The names of one hundred and eighty other persons, whose names were set out in a schedule, were put by the overseers upon the same lists, and under the same circumstances.

It was argued by the appellant,—First, that the list upon which the said *John Clemitson's* name stood, was, *primâ facie*, a good list of persons entitled to vote according to the terms of the heading, and that no objection having been taken, the Revising Barrister had no right to expunge the name. Secondly, that the publication of the name *John Clemitson* upon a list so headed and affixed as aforesaid, was a good and sufficient publication of the name of *John Clemitson* aforesaid, as upon the separate list of voters, entitled by reason of the occupation of lands or tenements of the rateable value of £12 or upwards per annum, and that the heading so interpolated as aforesaid was a "mistake" within the meaning of the 6 *Vict.* c. 18, s. 40, which the Revising Barrister had power to amend, and ought to have amended, by striking it out as surplusage. Third, that the heading so interpolated as aforesaid was "a misnomer of a thing so denominated as to be commonly understood" within the meaning of 6 *Vict.* c. 18, s. 101.

The Revising Barrister decided,—First, that the putting of *John Clemitson's* name upon a list so headed as aforesaid was a "mistake" within the meaning of 6 *Vict.* c. 18, s. 40, which he had power to correct,

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although no objection had been made to the said name.

Secondly, that the publication under such heading as aforesaid was not a good and sufficient publication of the said name as of such separate list of £12 occupiers as aforesaid, but was positively misleading, and that he had no power to reject the said heading as surplusage.

Thirdly, that the heading so interpolated as aforesaid was not "a misnomer of a thing so denominated as to be commonly understood" within the meaning of 6 *Vict.* c. 18, s. 101.

He, therefore, expunged the names of the said *John Clemitson*, and of the said one hundred and eighty other persons from the said list, and ordered the appeals to be consolidated.

If the Court should be of opinion that this decision was wrong, the register was to be amended by inserting the names of *John Clemitson*, and the said one hundred and eighty other persons, in the said list.

Udall, for the appellant. The Barrister was wrong in refusing to amend, even if an amendment was necessary. But, it is submitted, it was not. No heading is required by statute, nor could the heading here interpolated have misled any one who looked at the lists with proper attention. By the 30 & 31 *Vict.* c. 102, s. 30, the list of £12 occupiers in counties is to be made out in the same manner as nearly as circumstances admit, as the list of £10 occupiers in boroughs. And by 31 & 32 *Vict.* c. 58, s. 19, the occupiers in counties are to be arranged in a separate list after the list of voters otherwise qualified for the county franchise. That arrangement has been here followed. The

alphabetical list of £12 occupiers commences after the list of voters qualified in respect of property, and is continued in regular alphabetical order, without any reference to the interpolated heading. The interpolated heading, occurring as it does in the middle of the alphabetical list of £12 occupiers, between the names of Chester and Clemitson (though at the top of a sheet), is obviously a mere printer's mistake. The heading is a matter under the control of the Revising Barrister, and in *Elliott* v. *The Overseers of St. Mary Within, Carlisle* (*a*), the Revising Barrister amended a heading that was erroneous. Here, no doubt, the Revising Barrister has refused to amend; but an appeal lies on a question of amendment, even though the Revising Barrister has refused to amend. *Howitt* v. *Stephens* (*b*). As regards the questions for the Court, the Revising Barrister held, as matter of law, that the publication was misleading, and that is therefore a question of law for the Court to decide. That a person who used due care in perusing the lists could have been here misled is impossible. If the list of £12 occupiers had been intended to end where the interpolation is introduced, the overseers would have signed the lists there. The absence of their signatures would show that there was a mistake, to any one who looked at the lists with proper care. Again, the appellant's right to vote not being objected to, the Revising Barrister had no power to expunge his name, even assuming the name to be on a wrong list. That is clearly what the Revising Barrister has done. He has not refused to consider the list, but has revised it, expunging all names below the

(*a*) 1 *Lutw.* 508; *S. C.*, 4 *C. B.* 76.
(*b*) *K. & G.* 183; *S. C.*, 5 *C. B., N. S.* 30.

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interpolated heading. He also referred to *Morgan* v. *Parry* (*a*).

No one appeared for the respondents.

BOVILL, C.J. The 31 & 32 *Vict.* c. 58, s. 19, requires that the names of the £12 occupiers shall "appear in a separate list after the list of voters otherwise qualified." Here, after an alphabetical list of the voters qualified in respect of property, there follows an alphabetical list of the £12 occupiers, commencing about the middle of sheet III, under the heading "Voters as occupiers of rateable value of £12 or upwards. Per overseers' return," and going through the names of the £12 occupiers in regular alphabetical order, from names commencing with A on sheet III, to names commencing with W on sheet V. There is, therefore, a separate list of £12 occupiers as the section requires. But then at the top of sheet IV there is interpolated this heading—

"The List of persons entitled to vote in the election of Knights of the Shire for the Southern Division of the County of Westmoreland, in respect of property situate in the parish of Allendale."

That, however, is a general heading, which may include the alphabetical list of £12 occupiers, and which does not contradict, or render it unintelligible. As occupiers they *are* entitled to vote in respect of property situate in the parish. Looking to the alphabetical arrangement, I think the interpolation was not misleading, and, if there was anything wrong in it, it was proved before the Revising Barrister to be a mistake, and under sect. 40, he was bound to correct it.

(*a*) *K. & G.* 53; *S. C.*, 17 *C. B.* 334.

That section enacts, "that the Revising Barrister shall correct any mistake which shall be proved to him to have been made in any list," and, consequently, the duty of correcting mistakes is clearly and distinctly imposed.

The case does not so clearly appear to be within the 101st section, but if the interpolated heading was an inaccurate description of anything in the list, I think the thing was so denominated as to be commonly understood. The Revising Barrister, no doubt, holds that it was not, but he submits that as matter of law for our decision. On every ground, therefore, I think that the decision should be reversed.

WILLES, J. I think the lists are perfectly intelligible and accurate. The objection I understand to be, that the overseers being bound by the requirement of the Legislature to make a separate list of the £12 occupiers, have not made one which includes the name of Clemitson, and, consequently, that Clemitson ought not to be on the register, and must be denied the franchise. The Revising Barrister's reason seems to be, that, although the overseers have, as the Legislature intended they should, made an alphabetical list of persons of the required species, which list includes Clemitson's name, yet immediately before Clemitson's name there is at the top of a sheet (which is nothing more than a sheet of paper), a heading which gives a description inconsistent with the species—in fact, excludes the notion of it, and, consequently, cuts off from the species the name of Clemitson, and those which follow it, notwithstanding those names run on in regular alphabetical order. To see whether this view be right or wrong, it is necessary

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to consider what is the essential difference relied on. The heading interpolated is as follows:—

"The List of persons entitled to vote in the election of Knights of the Shire for the Southern Division of the County of Westmoreland, in respect of property situate in the parish of Allendale."

To my mind that description does not represent a different species, but represents the genus under which that and the other species fall. And, consequently, the notion that it cuts off the names that follow it from those that precede, founded on the solecism that the genus does not include the species, is untenable. I think that there is here neither superfluity nor mistake, except, indeed, of the printer, in inserting as he has done the generic description under which the particular species falls. The best test of such an objection is to be found in the language of my brother *Keating* in *Birks* v. *Allison* (*a*), where he says, that the object of the statute "was to enable a man's neighbours to ascertain by inquiry, whether or not he has the qualification which appears on the register." Now is it to be supposed that any one who read these lists with ordinary attention, would, instead of following the regular alphabetical order, look merely at the interpolated heading. I think it is as reasonable to suppose that a person wishing to ascertain the name of the book he is reading, would look at the top of the page, and not at the title-page. It appears to me the decision was over-refined.

KEATING, J. I am of the same opinion. The Revising Barrister held, that the interpolation was a

(*a*) *K. & G.* 521; *S. C.*, 11 *C. B., N. S.* 24.

mistake, which under sect. 40 he had power to correct; and, if it was a mistake, I agree that he had power to correct it, and should have thought that he ought to have done so. He declined, however, because he conceived that the interpolation caused the list to be in a state in which it could not be commonly understood, but would be likely to mislead, and that, consequently, there was no sufficient publication. He has, as I understand him, held this as matter of law *on the face of the documents*, and has referred to us the question whether, *on the face of the documents*, the list is misleading, or could not be commonly understood. I agree with my Lord, and my brother *Willes*, that there was nothing here which could be misleading to the eye of a reasonably careful man. They are all voters in respect of property in Allendale, and there is nothing in the interpolation which necessarily contradicts the supposition that the names which follow it are the names of £12 occupiers. The heading is, in fact, mere surplusage. As it could not mislead a reasonably careful man, that answers the question referred to us by the Revising Barrister. He held that he had power to amend, but referred it to the Court to say whether, on the face of the documents, he ought to have done so. I think he ought.

BRETT, J. This case involves two questions. First, whether there was a mistake. Secondly, whether, if there was a mistake, it was of so grave a character as to vitiate the list, and to preclude the Revising Barrister from amending it.

Now the list is made out under sect. 30 of the 30 & 31 *Vict.* c. 102, which requires the overseers to make

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out a list of those on whom the Act confers a right to vote for the county in respect of *occupation* "in the same manner, and subject to the same regulations as nearly as circumstances admit," as in boroughs the overseers are required by the Registration Acts to make one out of the £10 occupiers. And by 31 & 32 *Vict.* c. 58, s. 19, the persons so entitled to vote for a county are to appear in a separate list after the list of voters otherwise qualified. Under these two sections the list is to be made out. It is to be a separate list, and made out in the same manner, and subject to the same regulations as the borough list required by the 6 *Vict.* c. 18, and of which the form is given in Schedule B to that Act. The heading in that form is as follows:—

"The List of Persons entitled to vote in the Election of a Member [or members], for the City [or borough], of , in respect of property *occupied* within the parish, &c. . . . . ."

So that that form uses the words "property *occupied*" and not "property *situate*," the latter being the words used in the county forms as applicable to freehold or other property qualifications.

In the present case the list of £12 occupiers was properly headed at its commencement, but the printer interpolated a heading applicable to a freehold or other property qualification; and I think that that constituted an error in the list. At first sight it might be supposed that it made the one list into two, and, I think, it cannot be said to be strictly correct.

The next question is, to what extent did the error go? I think that it properly comes within the scope of sect. 101, as an "inaccurate description of a thing" described in the list, *viz.*, of the nature of the qualifi-

cation of the persons whose names appear after the interpolation. Looking to the alphabetical arrangement, and to the circumstance that there was no signature by the overseers immediately before the interpolation, I think the inaccuracy was not one which could have misled a reasonably careful person. In that view, indeed, it may be said that the list does not require amendment. I think, however, that when such an error exists, the Revising Barrister, under the power given him by sect. 40, ought to correct it. Under sect. 42, an appeal lies when he has come to an erroneous conclusion of law. How, then, has he dealt with this case? He has held that there was a mistake which, under sect. 40, he had power to amend, but he has also held *as matter of law* (so I read the case), that it was so misleading that he could not amend, and accordingly expunged the names. I think that was a wrong decision in point of law, and that those names ought not to have been expunged.

Decision reversed.

Attorneys—For Appellant, *Pattison, Wigg, & Co.*

NICHOLLS, Appellant; BULWER, Respondent.

Nov. 22.

In the third column of a list of claimants for a county there appeared the following qualification: "Freehold rent charge of £16 per annum issuing out of freehold houses," but no owner's name in the 4th column. The qualification *proved* was freehold land (with houses thereon) let on lease at £16 per annum.

Held, that the qualification proved was different from that described, and that the Revising Barrister had no power to amend such description. Willes, J., *dubitante*.

AT a Court for the revision of the list of voters for the southern division of the county of *Essex*, the respondent objected to the name of the appellant being retained on the list. The name of the appellant was on the list of claimants in respect of property in *West Ham*. The entries in the third and fourth columns, which were in accordance with the claim sent in to the overseers, were as follows:—

Nature of Qualification.	Street, lane, or other like place in this Parish, and number of house (if any), where the property is situate, or nature of the property and name of the tenant, or, if the qualification consists of a rent-charge, then the name of the owners of the property out of which such rent is issuing, or some of them, and the situation of the property.
Freehold rent-charge of £16 per annum issuing out of freehold houses.	1, 2, 3, and 4, *Stanley Cottages, Tower Hamlets Road*

It having been proved on the part of the objector that he had duly given the notices required by the Acts of Parliament, the Revising Barrister called on the claimant to prove that he was entitled on the last day of *July* last to have his name inserted in the list of voters in respect of the qualification described in the list. The claimant then produced and proved a deed of conveyance to himself in fee simple of a plot of land, with four houses erected thereon, in the parish of *West*

Ham, and stated that he had since the conveyance to him, and more than six months before the last day of *July*, let the land on lease for a long term of years at a yearly rent of £16. The four houses built on the land were proved to be now known by the description appearing in the fourth column of the list. The lease was an ordinary building lease, with a reservation of rent in the usual manner, and with the usual covenants. The claimant had not parted with his reversion expectant on the determination of the term, nor had he dealt with his freehold estate in the land otherwise than by granting the said lease. The claim had been sent in with the authority of the claimant, but it had not been signed or seen by him, and he did not know the description which had been given of his qualification until he saw the claim in Court. The Revising Barrister had no evidence before him, as to whether the person who made out the claim on behalf of the claimant knew what his qualification really was, and described it as a rent-charge by mistake, or whether he had been misinformed as to what the qualification was.

The Revising Barrister held, upon the authority of *Davies* v. *Hopkins* (*a*), that, as the claim had been published by the overseers, it was immaterial that it had not been signed; and this point was conceded by the objector. It was, however, contended on the part of the objector, that the claim should have been for "freehold houses," and that it did not appear that the claimant had a rent-charge, as described in the list, the rent reserved under the lease being a rent-service. On the part of the claimant it was admitted that he had

(*a*) *K. & G.* 118; *S. C.*, 3 *C. B., N. S.* 376.

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not a rent-charge strictly so called; but it was contended that the description in the list sufficiently described the qualification proved; and the omission of any owner's name in the fourth column was relied on to show that the claim was not a claim in respect of a rent-charge strictly so called. Further, it was contended that the description might be amended; and the Revising Barrister was asked to amend by striking out all the words in the third column, except "Freehold houses."

The Revising Barrister was of opinion, upon the evidence, that it had not been proved that the claimant had a rent-charge. He was satisfied that he had, subject to the requirements of the statutes as to registration, a good qualification to vote in respect of his freehold estate in the land and houses. He considered, however, that he could not retain his name, unless the qualification was the qualification described in the list. He thought that, as the description in the third column of the list was a particular description in legal language of a specific freehold interest in the land in question, such as would, if the claimant had possessed it, have given him a vote, he was bound, as matter of law, to construe the description as a description of that freehold interest, and of no other. He did not consider that this construction, which he felt bound to place on the third column, was affected by the omission of the owner's name in the fourth column. He also came to the conclusion, as a matter of fact, that any ordinary person, not a lawyer, on reading the description given, would not suppose the claimant to be the freeholder, or, as he would say, the owner of the houses, but would suppose him to be possessed of a charge on houses belonging to

some one else; and, therefore, if there was a question on which the Court thought he ought to state his finding as one of fact, he found that the description in the list would not be commonly understood to mean that the claimant had that freehold interest in the houses which he really had. For this reason, he thought that the description given in the third column of the list could not be considered to be, within the meaning of the 101st section of 6 *Vict.* c. 18, an inaccurate description, in the sense either of a clumsy or of a popular description of the nature of the qualification which the claimant really had. He also thought, that, in consequence of the particularity of the description actually given of the nature of the claimant's qualification, he had not any power of amendment, and that if he were to make the amendment asked, he should be altering the description of the qualification otherwise than for the purpose of more clearly and accurately defining the same.

The Revising Barrister was guided in arriving at the conclusion, that "freehold houses," and "freehold rent-charge," described qualifications of a different nature within the meaning of the Registration Acts, to some extent by the note given to form No. 2, in sched. H to 2 *Wm.* 4, c. 45, which directed claimants to describe the nature of their qualifications, either as "freehold houses," or as "freehold rent-charge," as the case might be. No other amendment was asked for, except the above-mentioned. Each party stated his intention of appealing against the decision, if adverse to him, in order, if possible, to obtain a decision of the Court upon the true legal construction of the proviso in sect. 40 of 6 *Vict.* c. 18, restricting a Revising Barrister from

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changing the description of the qualification, except for the purpose of more clearly and accurately defining the same. The Revising Barrister decided, for the reasons stated above, to make no amendment, but to expunge the name, and he expunged it accordingly.

The questions for the opinion of the Court were, whether the qualification proved was the qualification described in the list. Secondly, Whether the amendment asked for, or any and what amendment, could have been made.

Edward Clarke, for the appellant. The appellant had, admittedly, a good freehold qualification, but, it being described as a *rent-charge* instead of a *rent*, the Revising Barrister considered that, as matter of law, he had no power to amend the description. In this it is submitted he was wrong. In strictness the appellant's legal qualification was no doubt "freehold land," or "freehold houses," not "freehold rent," the reversion of the houses being in him; but, rent being incident to the reversion, "rent issuing out of freehold houses" would clearly have been a sufficient description.

[WILLES, J. Freehold rents are certainly often spoken of as being sold, where in strictness the thing sold is a reversion.]

Then if *rent* would have been a sufficient description, is it fatal to have described it as a rent-charge? Such a mistake is just what might be expected from an illiterate person, unaware of the distinction between a rent-charge and rent-service, and is, moreover, the very kind of inaccuracy which the Legislature intended should be

amendable. The language of *Byles*, J., in *Jones* v. *Jones* (*a*), bears on this point. In that case the description of a freehold lease as leasehold was held sufficient, *Byles*, J., answering the objection that the interest was in law freehold by saying that, if such strict accuracy were required, it might necessitate professional advice. An amendment which alters the qualification to one of a different nature, is no doubt beyond the competency of the Revising Barrister, but that the amendment proposed would not have done. The qualification here proved corresponded with that described, in this, that it is equally a 40*s.* freehold within 8 *Hen.* 6, c. 7. Suppose the qualification proved were a rent-seck, would rent-charge be a fatal misdescription? Moreover, the authorities show that the Revising Barrister is bound to look at the other columns on the list, and, consequently, that the description in column 4 may be used in aid of any deficiency in column 3. *Hitchins* v. *Brown* (*b*); *Howitt* v. *Stephens* (*c*); *Birks* v. *Allison* (*d*). Here column 4 is available thus. Form 3, sched. A, of 6 *Vict.* c. 18, requires, where the qualification is a rent-charge, that the name of the owner of the property out of which the rent issues should be stated in column 4. Here, in column 4, it is not stated, and from its omission the inference is that the qualification stated in column 3 cannot be intended to be a rent-charge. In column 3, all that is requisite is to state the general nature of the qualification, leaving the more particular description of it to column 4. See *per Tindal*, J., *Hitchins* v. *Brown* (*b*). Here, as to the nature of the

(*a*) *Ante*, p. 95; *S. C.*, *L. R.* 4 *C. P.* 422.

(*b*) 1 *Lutw.* 328; *S. C.*, 2 *C. B.* 25.

(*c*) *K. & G.* 183; *S. C.*, 5 *C. B.*, *N. S.* 30.

(*d*) *K. & G.* 507; *S. C.*, 13 *C. B.*, *N. S.* 12.

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qualification, "freehold" is the governing word. The form of claim in 2 *Will.* 4, c. 45, schedule H, No. 2, giving as instances of the mode in which the nature of the qualification should be described, "Freehold house (*or* warehouse, stable, land, field, annuity, rent-charge, &c.)," shows this. So, again, do the examples in schedule H, No. 3, which point to "freehold," "copyhold," "leasehold," as the cardinal distinctions in the *nature* of qualifications, as to which an error would not be amendable. Reading the description of the appellant's qualification in columns 3 and 4 together, it is submitted that sufficient information is given as to the nature and situation of the premises, and that is what the Legislature intended the Registration Lists should afford. See *per Tindal*, C.J., *Bartlett* v. *Gibbs* (*a*). He referred also to *Daniel* v. *Coulting* (*b*), and *Dodds* v. *Thompson* (*c*).

Shield, for the respondent. The qualification proved before the Revising Barrister must correspond with the qualification described on the list, sect. 40 expressly requiring the proof to be in respect of the qualification there described. Here, the qualification proved was an estate in fee simple, whereas that described on the list was a rent-charge. Clearly, then, the description was wrong, and, further, the error was one which the Revising Barrister had no power to amend. It is true that all that the third column of the list requires to be described is the *nature* of the qualification; and, therefore, so long as the right genus of qualification is there described, though imperfectly,

(*a*) 1 *Lutw.* 73; *S. C.*, 5 *M. & G.* 81. 7 *Scott, N. R.*, 609.

(*b*) 1 *Lutw.* 230; *S. C.*, 7 *M. & G.* 122. 8 *Scott, N. R.*, 649.

(*c*) *Hopw. & Ph.* 285; *S. C.*, *L. R.* 1 *C. P.* 133.

it may suffice, or, if not sufficient, may be amended. But here the description, instead of being general, is specific, and the wrong species is selected; and the selection of a wrong species constitutes a fatal objection. The barrister's power to amend, under sect. 40, clearly does not touch such a case. His power to change the qualification is limited to the introduction of greater clearness and accuracy of definition. So long, then, as the only objection to the description lies in its generality, there is a possibility that it may be overcome. Thus, in the converse case to the present, "40*s.* freehold," or even, perhaps, "freehold land," being a general description, might suffice to include "freehold rent-charge." But when, as here, a particular qualification is specified by the description, which, on proof, turns out the wrong one, the language of sect. 40 forbids an amendment. Striking the word "charge" out of the description here, the case, no doubt, would assume a different aspect, and possibly the description, then, though inaccurate, might, within sect. 101, be such as to be commonly understood. The distinction drawn by the fourth column in form 3, schedule A, to 6 *Vict.* c. 18, between a rent-charge and other property qualifications, is against the appellant, for it points to a rent-charge as a distinct qualification. Again, although the third column speaks of the *nature* of the qualification as the thing to be described, the proviso in sect. 40, when enacting that the proof shall agree with the description, speaks only of the *qualification*, enacting expressly, "that no evidence shall be given of *any other qualification* than that which is described in the list." Here, the qualification described in the list and the qualification proved, being respectively a rent-charge and the fee, are qualifications which could

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not co-exist, for if the rent-charge and fee were in the same person, the rent-charge would merge. By saying that he has a rent-charge, the appellant says, in effect, that he has not the fee—in other words, that he has not the interest which his proof shows. That the fourth column may be used in aid of the third, is not denied; but in the present case it does not aid it. The inference which would be drawn by an objector from the absence of any owner's name in the fourth column would be, not that the appellant was the owner, but that the appellant had purposely omitted to insert the owner's name, lest inquiries should be made of him as to the existence of a rent-charge. It is true that the description in the fourth column is, as it stands, inaccurate as a description of a rent-charge, because no owner's name appears there, and that, on the other hand, it is a description not inconsistent with the qualification proved. But the mere circumstance of its not being inconsistent is not enough. It is also consistent with other qualifications, and consequently does not point so unmistakeably to the qualification proved as to cure the defect in the third column. At most it could only raise a suspicion as to the qualification to which the third column might have been intended to point, whereas in the cases where it has been held to supplement the defects of the third column, it has put the matter beyond doubt. Moreover, the defects so supplemented in the cases cited, were insufficiencies of description, and not, as here, undoubted misdescriptions. In *Hitchins* v. *Brown* (*a*), the word "house" in the third column pointed to the right genus of qualification, *viz.*, a house

(*a*) 1 *Lutw.* 328; *S. C.*, 2 *C. B.* 25.

qualification, and the fourth column only supplemented that description by pointing out the specific houses occupied in succession which conferred the qualification. But on the other hand, in *Bartlett* v. *Gibbs* (*a*), and *Onions* v. *Bowdler* (*b*), where the fourth column only stated the house last occupied, the Court held that the Revising Barrister had no power to amend the description. And if he had no power there, much less has he any here. For there it might well be contended that in the third column, under the word "house," the right genus of qualification was described.

[WILLES, J. Suppose the language had been: "freehold rent issuing out of houses (Nos. 1, 2, 3, 4) which I," *i.e.*, the appellant, "*describe as a rent-charge.*"]

That certainly would have been a more doubtful case. The case of *Jones* v. *Jones* (*c*) is plainly distinguishable. There the claimant's real qualification, though not technically described, was yet described so as to be commonly understood; whereas, here there is an express finding of the Revising Barrister, that the description in the list would not be commonly understood, as describing the interest which the claimant really had. What qualification the claimant may have intended to describe here, is not the question, but whether he has in fact so described it as to be commonly understood.

Clarke, in reply. *Bartlett* v. *Gibbs* (*a*), and *Onions* v. *Bowdler* (*b*), do not govern the present case. There, no

(*a*) 1 *Lutw.* 73; *S. C.*, 5 *M. & G.* 81.

(*b*) 2 *Lutw.* 59; *S. C.*, 5 *C. B.* 65.

(*c*) *Ante*, p. 95; *S. C.*, *L. R.* 4 *C. P.* 422.

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doubt, the qualification proved differed from that described, for it was founded on a distinct section of the Act of Parliament. The distinction that has been drawn between an insufficient description and a misdescription is untenable, and is neither supported by the cases cited nor by the language of the Act. A lawyer, no doubt, might understand the word rent-charge as limited to that which is a rent-charge in legal strictness, but illiterate persons, for whom this legislation was meant, would not so understand it. The objection raised comes to this, that the description given, though an inaccurate description of that qualification which the claimant intended to describe, is radically bad, because it happens also to be an accurate description of one which he never intended. It is submitted that that circumstance cannot in any way affect the power to amend what is really an inaccuracy in the statement of the description intended. Perhaps it must be admitted on the cases that if the qualification described differs from that proved as to its local situation, that is an objection which is not amendable. But that is not the present case, nor does the reasoning applicable there apply here, *viz.*, that the Legislature wished the objector to have the opportunity of ascertaining, by inquiry, whether the claimant's qualification really existed. *Onions* v. *Bowdler* (*a*).

BOVILL, C.J. The object of the Legislature appears to me to have been that a person claiming the franchise should describe the nature of his qualification in such terms as to enable the Revising Barrister to judge of its sufficiency. Where the description of the qualifi-

(*a*) 2 *Lutw.* 59; *S. C.*, 5 *C. B.* 65.

cation is insufficient for the purpose of being identified, the 40th section empowers the Revising Barrister to receive evidence, and to alter the description of the qualification, upon the matter so insufficiently described being supplied to his satisfaction; but subject to that power he has no alternative in such a case, but to expunge the name from the list. Then follows this express proviso, that "no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the Barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same." Here the qualification of the claimant, as stated in the list, is "freehold rent-charge of £16 per annum issuing out of freehold houses." In that there is no ambiguity. It is a good qualification on its face, and sufficiently described; and the Revising Barrister had no alternative but so to declare it. Then does that qualification so described differ from freehold land—the qualification proved? For many years there was a distinction as to a rent-charge which was familiar to every one. By 3 *Geo.* 3, c. 24, rent-charges were required to be registered for twelve months before they would confer a vote. The 6 *Vict.* c. 18, although by its 72nd section it repealed the 3 *Geo.* 3, c. 24, expressly recognised rent-charges as constituting a peculiar description of franchise. Thus, in the form of notice of claim in No. 2, schedule A (which is the form required by the 4th section to be sent to the overseers), we find the following requirement in the fourth column: "If the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent is

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issuing, or some of them, and the situation of the property." In the form given under No. 3 of the same schedule (made out under sect. 5), there is a similar requirement. Bearing in mind, then, that this is a qualification known to the law, which, prior to the 6 *Vict.* c. 18, stood on a distinct footing, and is, by that statute, dealt with in the mode I have pointed out, I am of opinion, that the Legislature did regard it as a different description of qualification from the ownership of freehold land, and intended that there should be a difference between the two qualifications. The only ground, indeed, for holding that they stand on the same footing, is, that they both have their origin in the 8 *Hen.* 6, c. 7. But that might be equally said, if the qualification claimed was a house in a street, and that proved was a field in a marsh. In the present case, the description of the qualification is good, as the description of a rent-charge, but the objection to it is that the proof adduced does not support that description, but shows a title to land and not to a rent-charge. I think the Revising Barrister was not only not at liberty to amend here, but that he is expressly prohibited from doing so. The statute says, that the Revising Barrister is not to change the description of the qualification, as it appears on the list, "except for the purpose of more clearly and accurately defining the same," *i.e.*, the qualification previously described. Thus it might have been competent for the Revising Barrister to add something to explain the qualification of a rent-charge, but not to do what was here proposed. The amendment proposed would not have been for the purpose of more accurately defining the qualification claimed, but of altering it, from a claim to a rent-charge, to a claim to

land. The authorities show that no power exists to alter the qualification.

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WILLES, J. But for the respect that I entertain for my Lord and the other members of the Court, I should have been of a different opinion. If the description here had been "freehold rent issuing out of freehold houses," instead of "freehold rent-charge," issuing thereout, it would, though inaccurate, have been a sufficient description. Looking to what the substance of the qualification is, that would have been such a description as would be commonly understood. The objection urged is founded on the word charge, an inaccuracy of the most venial description, there being but few people who really understand what a rent-charge is. However, without enlarging on the matter, I will simply say that I am not satisfied that Mr. *Clarke* was not right. The case has been well argued on both sides.

KEATING, J. I think the Revising Barrister was right, though after the expression of opinion that I have heard from my brother *Willes*, not without some hesitation. The qualification here stated is a good qualification, and one well known to the law; and in the description of it, "freehold rent-charge issuing out of freehold houses," there is no ambiguity. But the mode in which it is attempted to support this description is by showing the claimant to be the owner of freehold land. Freehold land and freehold rent-charge appear to me distinct qualifications, and I think the Legislature has so considered them. The question appears to me not so much as to the intention of the party who claimed, or whether he understood what he was claim-

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ing, as, whether the description is such as to enable other parties to know what is the qualification claimed —that being the point to which the Legislature has attached importance. As matter of fact, the Revising Barrister finds, if that be matter of fact for him, that the description would not be commonly understood to mean that the claimant had the interest which he really had. No doubt a slight alteration, *viz.*, the striking out the word charge, would make all the difference, and the description would then be a sufficient, though possibly not a strictly legal description. I quite agree that we ought not to be astute to defeat claims to the franchise, and, therefore, in *Jones* v. *Jones* (*a*) (having regard to the forms Nos. 3 and 6 in sched. A of the Reform Act, which give "lease of warehouse for years," as a sufficiently precise description of a qualifying term of years), we held "leasehold house and garden," a sufficient description to include a lease for life of a house and garden, although in law a freehold interest. But in the present case, the true qualification could not be shown without altering the qualification as stated in the list, and, I think, although we ought not to be astute to defeat votes, we ought also to take care that the description given is, at all events, such as to enable an objector to ascertain what it is to which he is objecting.

BRETT, J. I think freehold rent-charge, and the ownership of freehold land, are distinct qualifications. They differ in fact, and the difference has been recognised for years, both in electioneering practice, and in election law. Form 3 in sched. A of 6 *Vict.* c. 18,

(*a*) *Ante*, p. 95; *S. C.*, *L. R.* 4 *C. P.* 422.

expressly points out the difference of description which is required in the case of a rent-charge; and for sufficient reasons. The 3 *Geo.* 3, c. 24 (which required the registration of rent-charges), having been repealed, the information which form 3, schedule A, requires to be given, was necessary for the purpose of giving an objector the opportunity of satisfying himself as to the existence of such a qualification. Here the description given is a good description of a qualification by freehold rent-charge, but not of a qualification by ownership of freehold land; nor would it be so commonly understood. The case is one of misdescription, not of insufficient description, and I think that under sect. 40 the Revising Barrister had no power to amend. At one time, indeed, I thought that that section only forbad an amendment where the qualification proved was of a different *nature* from that described. But looking to the words of this section, I think that none of the earlier branches of it give any power applicable to this case, and the proviso, as I apprehend, clearly does not enlarge the powers previously given; and this case falls within the proviso. Even though the *nature* of the qualification proved be the same as that described—as where both are freehold lands—yet, if the description given be a description of Blackacre, while the proof is of Whiteacre, that is not an insufficient description, but a misdescription, and the Revising Barrister has no power to amend it.

Decision affirmed without costs.

Attorneys—For Appellant, *Houghton & Wragg.*
For Respondent, *Wyatt & Hoskins.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

HILARY TERM, 1871,

IN THE

THIRTY-FOURTH YEAR OF QUEEN VICTORIA.

1871.

Jan. 20.
April 24.

ROLLESTON, Appellant; COPE, Respondent.

R., a member of, and owner of three shares in, a freehold building society, had mortgaged three freehold tenements in fee to the society, to secure "the subscriptions, payments, redemption moneys and fines in relation to the sum of £300," advanced to him by the society on his three shares, to be repaid in ten years, with capitalised interest, by monthly instalments of £3 9*s.* (making £41 8*s.* a year, or £414 in all.)

R. had always been in possession, and had duly paid about £350, but had still two years' payments to make, with the option of redeeming by a present payment of £73 1*s.*

The annual value of the tenements was £31 4*s.*

If the annual payments of £41 8*s.* were apportioned, two-thirds (£27 12*s.*) would go to discharge the principal, and one-third (£13 16*s.*) to pay the interest.

Held, that only so much of the annual payments as represented the interest should be deducted from the annual value, and that consequently the claimant had an equitable freehold of the value of 40*s.* by the year.

THE case stated,—

At a Court held for the revision of the list of voters for the parish of *St. Mary*, in the southern division of the county of *Leicester*, one *James Cope* duly objected to the name of *Benjamin Rolleston* being retained on

the list of voters for the said parish. The name of *Benjamin Rolleston* (hereinafter called the claimant), appeared upon the list of voters entitled to vote, thus—

Christian and Surnam of the Claimant at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like place in the Parish.
Benjamin Rolleston	26, *Asylum Street*	Freehold houses	71, 73, 75, *Asylum Street*

The facts of the case, as proved before the Revising Barrister, were as follows:—

The claimant (*Benjamin Rolleston*), is a member of a Freehold Building Society, called the Leicester Permanent Benefit Building Society, established under 6 & 7 *Will.* 4, c. 32, the rules and regulations of which are to be taken as part of this case, in which society he held three shares.

In the month of *February*, in the year 1863, the claimant was possessed of three freehold tenements, and was desirous of borrowing the sum of £300 in respect of his said three shares in the said society, and in consequence of the said society advancing him that sum he executed a mortgage in fee (a copy of which is attached, and is to be taken as part of this case) (*a*) of the

(*a*) The mortgage deed, which was between *Rolleston* of the first part, and the trustees of the building society of the second part, recited (*inter alia*) that a society called "The Leicester Permanent Benefit Building Society" had been established under the 6 & 7 *Will.* 4, c. 32, and its rules duly certified and enrolled, that *Benjamin Rolleston* was a shareholder and member of the society, and that the trustees had, in pursuance of the rules, agreed to advance and lend him £300 "upon and in respect of his three shares therein, to be paid in ten years by monthly instalments of £3 9*s.* on his executing" the mortgage.

The deed then conveyed the three tenements in question in fee from *Rolleston* to the trustees

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said freehold tenements of the society to secure the subscriptions, payments, redemption moneys and fines, in relation to the sum of £300 by monthly instalments of £3 9*s.*, extending over a period of ten years. The mortgage deed provided that if, during the above-mentioned period, the mortgagee neglected for four consecutive calendar months to pay all the subscriptions and payments, and to perform the regulations which on his part, as a shareholder and mortgagee, are by the rules of the society directed to be paid and performed, the society should enter into possession of the premises, and sell and dispose of them. The claimant has duly

in the ordinary way, subject to the following proviso of redemption:—

"Provided always, and it is hereby declared and agreed, that if the said *Benjamin Rolleston*, his heirs, executors, or administrators, shall from time to time during the term of ten years, commencing from the date hereof, duly pay, observe, and perform, all and every the subscriptions, payments, redemption moneys, fines, and other regulations, which, on his or their part respectively, as a shareholder and mortgagor, are by the rules of the said society and the tables thereto annexed and the aforesaid Act" (6 & 7 *Will.* 4, c. 32), "or by these presents agreed or directed to be paid, observed, and performed, by the said *Benjamin Rolleston*, for or in respect of his three shares in the said society, or the advance hereby made, then and when and so soon as the said sum of £300, and all other payments as aforesaid, shall have been fully paid and satisfied or otherwise discharged according to the rules and tables of the said society, then the said trustees or trustee for the time being of the said society, will, at the request and cost of the said *Benjamin Rolleston*, his heirs or assigns, indorse on these presents a receipt for all moneys hereby secured, and do all other necessary acts for vacating and discharging this security."

The deed also contained (*inter alia*) a proviso for entry and sale by the mortgagees in case of default for four consecutive months as stated in the case, and a covenant by *Rolleston* with the trustees that he, his heirs, executors, administrators, or assigns, would "from time to time duly pay, observe, and perform, all the subscriptions, payments, fines, redemption moneys, and regulations, which by or according to the rules and tables of the said society and the aforesaid Act and these presents respectively, are or ought to be by them paid, observed, and performed, for or in respect of his said shares in the said society, or the advance hereby made."

paid all the interest due under the mortgage deed, and has always been, and now is, in the actual possession of the property.

The periodical payments made by the claimant have amounted to £350 in the whole. The claimant has two years' annual payment still to make, but he may redeem the mortgaged property for a present payment of £73 1*s.*

The annual value of the freehold tenements is £31 4*s.*, and the annual payment made to the society is £41 8*s.* This last-mentioned payment is made generally in reduction of the sum borrowed in discharge of the claimant's payments and subscriptions in accordance with the rules of the said society.

The interest, which is not more than 7 per cent. for the term of years, is capitalised and added to the sum borrowed.

The receipts given by the society to the claimant, a copy of one of which is annexed to this case, and to be taken as part thereof, do not show what sum is received for interest, and what is received for principal; but if the annual payments of £41 8*s.* were apportioned, two-third parts would be paid in discharge of principal, and one-third part in payment of the interest. It was contended, on behalf of the claimant, that only so much of the annual payment as represented the interest on the loan, as in the case of a common mortgage, should be deducted from the annual value, and if this were done the claimant has a freehold of 40*s.* annual value in the said freehold houses.

It was contended, on behalf of the objector, that the whole of the payments to the said society, on whatever account they are made, should be set off against the annual value of the property, and if this were done,

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the claimant has not a freehold of 40*s.* annual value in the said tenements. The Revising Barrister was of opinion that, in accordance with the decided cases, the whole amount of the payments to the society was a charge upon the estate, and should be deducted from the annual value thereof, and that such deduction, reduced the value of the estate below 40*s.* and he erased the name of the claimant off the list of voters.

[Other appeals were consolidated].

If the Court should be of opinion that only so much of annual payments as would represent the interest on the loan, as in the case of an ordinary mortgage, should be deducted from the annual value of the claimant's property, then the names of the said *B. Rolleston* and the other persons mentioned in the schedule, were to be restored to the lists of voters. If otherwise, then these names were to remain erased.

Griffits, for the appellant, contended, that the annual payments made by the appellant were, in substance, nothing more than the principal and interest of a mortgage loan, repayable by monthly instalments. That in ascertaining the annual value of the appellant's freehold, so much only of the annual payments as represented the interest on the loan ought to be deducted; and that here, if that were the principle to be adopted, the Revising Barrister had found that the appellant's freehold was of sufficient value. That the only distinction between the present case and that of an ordinary loan on mortgage, consisted in the principal being repayable here not in a lump sum, but by instalments; and that the principal, in whichever way repayable, was

only a charge on the corpus of the estate, and not on the annual value. That so much of the sums repaid, as represented principal, were in fact investments for the benefit of the estate. He cited *Robinson* v. *Dunkley* (*a*), as governing the present case, and pointed out that in that case *Erle*, C. J., and *Byles*, J., both distinguished *Copland* v. *Bartlett* (*b*), upon the ground that in that case there was no finding of a beneficial interest in the claimant of the yearly value of 40*s*. The case of *Beamish* v. *The Overseers of Stoke* (*c*), had followed the authority of *Copland* v. *Bartlett* (*b*), and was either distinguishable from *Robinson* v. *Dunkley* (*a*), upon the same ground as *Copland* v. *Bartlett* (*b*); or, if not, was virtually overruled by *Robinson* v. *Dunkley* (*a*). He also cited a manuscript note of an argument of Lord Justice *Mellish*, when at the bar, in a case of *Swarbrick* v. *Beswick* (*d*), and on the question of apportionment referred to, *Moore* v. *The Overseers of Carisbrooke* (*e*).

Quain, Q. C., for the respondent. The case has been treated on the other side as simply a question of the repayment of so much principal and so much interest; but the deed in question does not even mention interest. The covenant in the mortgage deed is for the payment and observance of "all the subscriptions, payments, fines, redemption moneys, and regulations, which by or according to the rules and tables of the said society," ought to be paid and observed. So, again, the proviso for redemption is conditioned for payment and observance by

(*a*) *Hopw. & Ph.* 1; *S. C.*, 15 *C. B. N. S.* 478.

(*b*) 2 *Lutw.* 102; *S. C.*, 6 *C. B.* 18.

(*c*) 2 *Lutw.* 189; *S. C.*, 11 *C. B.* 29.

(*d*) Unreported, there having been no decision upon it.

(*e*) 2 *Lutw.* 233; *S. C.*, 12 *C. B.* 661.

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the appellant during ten years of "all and every the subscriptions, payments, redemption moneys, fines, and other regulations," payable and to be observed by him in respect of his three shares, according to the rules of the society, and the tables thereto annexed; and further on it provides that, "when and so soon as the said sum of £300, and all other payments as aforesaid," shall have been satisfied, the security shall be discharged, as there prescribed. So again, the power in the mortgagees to enter and sell is to arise upon four consecutive months' default in payment or performance of the subscriptions, payments, or regulations. No doubt the appellant is bound by the deed to pay, during a period of ten years, monthly instalments of £3 9*s.* (amounting annually to £41 8*s.*), but the deed does not show what part of those instalments is referable to interest, while the stipulations it contains as to payment all refer in terms to subscriptions, payments, fines, and redemption moneys. The Revising Barrister finds, indeed, as a fact, that the interest is capitalised, and that it is *not more than* 7 per cent. for the term, but he does not find how much it is. He also says that on an apportionment two-thirds *would be* paid in discharge of principal, and one-third in payment of the interest; but he does not state how that is arrived at; and the receipts given by the society make no separation of principal from interest.

The case then stands thus. The appellant has a freehold of the annual value of £31 4*s.*, out of which he has annually to pay charges amounting to £41 8*s.*; so that, on these being deducted, the annual value to him is nothing. The appellant clearly cannot, in the words of the 8 *Hen.* 6, c. 7, expend 40*s.* by the year, nor has

he within that statute "free land or tenements to the value of 40*s.* by the year "above all charges."

As regards the authorities, *Copland* v. *Bartlett* (*a*) is an express decision that monthly payments of this kind, by a member of a building society, are a "charge" within 8 *Hen.* 6, c. 7. That case was followed by *Lee* v. *Hutchinson* (*b*), where a mere personal agreement to pay the interest was treated as a "charge," although the mortgage deed only secured the principal. *Williams*, J., there said :—"I consider this an ingenious attempt to evade the construction put upon the Act of Parliament in *Copland* v. *Bartlett* (*a*). The effect of the different statutes is to prevent the Court from taking a strict lawyer-like view of the position of mortgagor and mortgagee with reference to the word 'charge' in the statute of *Hen.* 6; and we are, therefore, compelled to regard the case in a popular aspect." In *Moorhouse* v. *Gilbertson* (*c*), *Maule*, J., in the discussion of the question what constituted a "charge" under the 12 *Geo.* 2, c. 18, ss. 5 and 6, said: "The meaning is, that nothing is to be considered which the freeholder has to pay in respect of his own enjoyment." Here, in respect of his enjoyment, the appellant has to pay £41 8*s.* *Beamish* v. *The Overseers of Stoke* (*d*), another case of a building society, and in which the amount payable for principal and interest were separated by the Revising Barrister, is a strong authority against the appellant, and precisely in point. The question there submitted was whether "only so much of the weekly payments as was payable in respect of interest ought to be deducted from the annual

(*a*) 2 *Lutw.* 102; *S. C.*, 6 *C. B.* 18.

(*b*) 2 *Lutw.* 159; *S. C.*, 8 *C. B.* 16.

(*c*) 2 *Lutw.* 260; *S. C.*, 14 *C. B.* 70.

(*d*) 2 *Lutw.* 189; *S. C.*, 11 *C. B.* 29.

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value." The Court decided that the whole annual payment must be deducted. *Maule*, J., in the course of the argument there said :—"The true test of value is whether the tenant would take the land from year to year, pay all the charges, and give the claimant 40*s.* a-year besides." That question must be answered in the negative here, as well as there. *Jervis*, C. J., in giving judgment, said :—"The estate is worth £6 a-year, but the appellant pays in respect of it, for interest, expenses, and instalments towards the discharge of the principal money due, £11 14*s.* The annual amount of the rents and profits, therefore, is a *minus* quantity. At present, the estate is worth nothing *per annum* to the claimant. If he were to go on paying this sum for four years, and at the end of that time were to commit a forfeiture by a breach of any of the conditions of the mortgage, he would then lose his estate altogether." *Robinson* v. *Dunkley* (*a*) is, no doubt, a counter authority; though, possibly, that case may be supported on the ground suggested in a note to the case of *Robinson* v. *Dunkley*, in *Hopwood & Philbrick's Reports, viz.*, that the Revising Barrister having found on the facts that the respondent had acquired an equitable estate worth more than 40*s.* a-year above all charges, the Court would not say he was not justified in so finding, although to acquire the fee a payment of 40*s.* was still due; which would reduce the net annual income for that year to 20*s.* only. *Hamilton* v. *Bass* (*b*) was also referred to.

Griffits replied, citing *Astbury* v. *Henderson* (*c*).

(*a*) *Hopw. & Ph.* 1; *S. C.*, 15 *C. B. N. S.* 478.

(*b*) 2 *Lutw.* 213; *S. C.*, 12 *C. B.* 631.

(*c*) *K. & G.* 6; *S. C.*, 15 *C. B.* 251.

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BOVILL, C.J. The claimant, being a member of and holding shares in a building society, was the owner and in possession of certain freehold houses, in respect of which he claimed to be on the register of county voters. These houses he had conveyed, by way of mortgage, to the society, as security for £300 advanced to him, and by the mortgage deed and rules of the society, in order to redeem the property, he was bound to pay, during a period of ten years from 1863, to the society, monthly instalments of £3 9*s.*, which amounted to the sum of £41 8*s.* in each year, and in case of certain default, the society might enter upon the houses. At the time in question the claimant had paid £350, and two years remained during which he would have to pay the monthly instalments, or he might then have redeemed the property by a present payment of £73 10*s.* The annual value of the houses was £31 4*s.*

It was contended for the claimant that only such sum as would be equivalent to interest on the loan ought to be deducted from the annual value to the claimant.

The learned Revising Barrister was of opinion that the whole of the payments ought to be deducted in accordance with two decisions of this Court, and he disallowed the claim to vote.

The appellant relied upon another and later decision of this Court, which he contended overruled the two previous cases.

The question submitted to us is, whether only so much of the annual payments as would represent interest on the loan should be deducted, and upon the result of our opinion on that point, this appeal is made to depend.

The statute of 8 *Hen.* 6, c. 7, requires that the voter

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shall have "free land or tenement to the value of 40*s.* by the year at the least, above all charges," and declares that "such as have the greatest number that may expend 40*s.* by the year and above as afore is said, shall be returned by the sheriffs of every county knights for the Parliament."

"The sheriff is also empowered to examine upon oath every voter how much he may expend by the year." And the Act declares, "that he which cannot expend 40*s.* by the year as afore is said, shall not vote."

The property, therefore, must be of the value of 40*s.* a-year at the least, above all charges, within the meaning of that enactment.

The statute 28 *Geo.* 3, c. 36, s. 6, treats the interest of the voter as one which must be of the value of 40*s.* by the year over and above the interest of any mortgage upon the estate, and also above all outgoings payable in respect of the said estate.

Under the provisions of different statutes, and ultimately by the Registration Act of 6 *Vict.* c. 18, s. 74, a person who has mortgaged his estate, but continues in possession, is entitled to the franchise, though his equitable estate must be of the same value that would be requisite if he were still the owner of the legal estate. See *Copland* v. *Bartlett* (*a*), and *Barrow* v. *Buckmaster* (*b*).

It has also been decided that expenses incurred in increasing the annual value must be deducted, because they are absolutely necessary in order to produce such value, such as the cost of manuring and cultivating land, and the maintenance and repairs of houses and

(*a*) 2 *Lutw.* 102; 6 *C. B.* 18. (*b*) 2 *Lutw.* 235; 12 *C. B.* 675.

buildings, *Hamilton* v. *Bass* (*a*); the cost of collecting rents when such an expense is found to be necessary, *Sherlock* v. *Steward* (*b*); and when the property is let to a tenant, the amount of the tenant's rates if and when the landlord has undertaken to pay them, *Moorhouse* v. *Gilbertson* (*c*). Other cases have been decided on the ground that the deductions sought to be made were charges within the meaning of the statute, such as a rent-charge, *Copland* v. *Bartlett* (*d*), and the cases there cited by Mr. *Badeley*, and *Barrow* v. *Buckmaster* (*e*); the yearly interest secured by a mortgage, *Moore* v. *Carisbrooke* (*f*), and yearly interest actually paid by agreement where the principal alone was secured by the mortgage, *Lee* v. *Hutchinson* (*g*). The same rule, I apprehend, would apply to the case of annuities or other annual sums charged upon the property, but in the case of an ordinary mortgage it has never been supposed that the whole principal money must be deducted in the year when it is due or becomes payable.

There are also three important cases directly bearing upon the present question, and each of them decided with reference to building societies.

The first is the case of *Copland* v. *Bartlett* (*d*), where the claimant, being a member of a building society, had obtained a conveyance of the property and had executed a mortgage to the trustees. The amount of the purchase money secured was £65, and the claimant was bound by the mortgage deed to pay 15*s.* a month (equal to £9 a-year), whilst the annual value of the property was

(*a*) 2 *Lutw.* 213; 12 *C. B.* 631.
(*b*) *K. & G.* 286; 7 *C. B. N. S.* 21.
(*c*) 2 *Lutw.* 260; 14 *C. B.* 70.
(*d*) 2 *Lutw.* 102; 6 *C. B.* 18.
(*e*) 2 *Lutw.* 235; 12 *C. B.* 664.
(*f*) 2 *Lutw.* 233; 12 *C. B.* 661.
(*g*) 2 *Lutw.* 159; 8 *C. B.* 16.

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only £8, but if only interest on the £65 was to be deducted, there would have been a clear yearly value of 40*s.*

This Court decided that these monthly payments were a charge upon the property, and that they must be taken into account in ascertaining the annual value, and as they reduced the annual value below 40*s.* the vote was disallowed.

The next case was *Beamish* v. *Stoke* (*a*). The annual value of the property there was £6, and it was mortgaged to the trustees of the building society; the amount due upon the mortgage for principal was £47 10*s.* 3*d.*, and the payment, which the claimant was bound to make, of 4*s.* 6*d.* weekly on account of principal and interest, amounted to £11 14*s.* per annum; this sum was apportioned by the secretary as follows, *viz.*, £8 18*s.* in part liquidation of the principal of the mortgage debt, 6*s.* for incidental expenses of working the society, and £2 10*s.* for premium or interest on the amount of principal remaining unpaid. It was not disputed that the 6*s.* and the £2 10*s.* should be deducted, and the only question submitted to the Court was, whether the payment in part liquidation of the principal ought to be deducted in ascertaining the annual value.

The Court decided that the whole of these weekly payments constituted a charge upon the property, and must be deducted, notwithstanding a part of them was made for repayment of the principal.

The last of the three cases is *Robinson* v. *Dunkley* (*b*),

(*a*) 2 *Lutw.* 189; 11 *C. B.* 29.
(*b*) *Hopw. & Ph.* 1; 15 *C. B. N. S.* 478.

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which came before this Court in 1863. In that case the claimant, who was a member of a building society, had executed a mortgage to them. The amount advanced in the first instance was £73, and he was bound to make monthly payments amounting in the whole to £4 per annum. The property was of the value of £3 per annum. On the 31st *January* preceding the registration, he had paid the whole amount owing by him with the exception of £2. This sum would be payable by him by monthly payments during the following six months, and was in fact paid by the month of *July*. The Revising Barrister expressly found as a fact that the £71 having been paid before the 31st of *January*, and the remaining £2 by *July*, the claimant had a freehold prior to the 31st of *January* of the value of 40*s*. per annum, and, therefore, he retained his name on the list of voters. This case was decided in favour of the respondent in the appeal.

It was contended before us that this latter case was at variance with the previous decisions, and virtually overruled them. It is difficult to reconcile those decisions, and still more difficult to distinguish the present case in principle from *Robinson* v. *Dunkley* (*a*).

The question is no doubt involved in much doubt, and, but for the decision in the last case, I should have had no hesitation in acting as the Revising Barrister has done in this case upon the authority of *Copland* v. *Bartlett* (*b*), and *Beamish* v. *Stoke* (*c*), and upon the reasons of the very learned and eminent judges who decided those cases.

The later case, however, of *Robinson* v. *Dunkley* (*a*),

(*a*) *Hopw. & Ph.* 1; 15 *C. B. N. S.* 478.
(*b*) 2 *Lutw.* 102; 6 *C. B.* 18.
(*c*) 2 *Lutw.* 189; 11 *C. B.* 29.

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having been decided, I think it is better to abide by that decision; there are also strong arguments in support of it, and applying it to the present case, the result will be that the payments made by the claimant representing a greater value than 40*s.* a-year, the decision of the Revising Barrister must be reversed and the claim to vote allowed.

The question in these cases in future for the Revising Barrister to consider will be, whether taking the payments which have been paid for principal or purchase-money into account, and deducting the proper annual sums, independently of the payments on account of principal, the claimant's interest in the property is of the value of 40*s.* by the year. If his interest in the property be found to be of that value he will be entitled to the franchise, otherwise his claim to be placed on the list of voters must be disallowed.

WILLES, J. I am of the same opinion. This case ought to be decided according to the construction of the statutes, and their application to the substantial interest of the mortgagor, not his dry legal as distinguished from his equitable estate.

The statute of *Hen.* 6 would exclude him from the franchise, because of his not having the legal estate. The subsequent statutes have corrected this, and the effect of them is to treat the mortgagor as having the freehold subject to a charge of the principal money, or so much as remains unpaid, and of the interest.

In an ordinary mortgage, payment of the principal may be enforced at any time after the day it falls due; but no regard is paid to that incumbrance, provided that the statute of *Hen.* 6 is in other respects satisfied.

To satisfy that statute two conditions must be fulfilled.

First, the land must be freehold, to the annual value of 40*s.* at the least above all charges, in the original "*outre les reprises,*" a term never applied, that I can find, to a payment which redounds to the permanent benefit of the owner of the land (as building a house or such like), but only to such payments as rent-charges, ordinary repairs, taxes, and, by analogy and statute, to interest, the payment of which, once made, is so much spent and gone, neither enjoyed by, nor invested for, the owner or mortgagor. Secondly, the voter must be able to expend (that is, have for his own benefit,) 40*s.* by the year.

It follows, therefore, that to vote in respect of an equity of redemption—1st, that estate must be of the value of 40*s.* by the year; and, 2nd, the voter must have in respect thereof a present benefit, or capacity of benefit, of 40*s.* by the year.

If the land is mortgaged up to its full value, or to such an amount that the equity of redemption is not worth the purchase of 40*s.* a-year, the first condition is not fulfilled. This was the case supposed by Lord *Truro* in *Copland* v. *Bartlett* (*a*), where he asked, "How was the right to vote formerly dealt with where the property, in respect of which the vote was claimed, was charged up to the full value? My impression is, that the vote was never allowed." And the same opinion was expressed by *Jervis*, C.J., in *Beamish* v. *Stoke* (*b*), where he said, "The case does not find that that which the party has already paid towards the purchase-money

(*a*) 2 *Lutw.* 105; 6 *C. B.* 23. (*b*) 21 *Lutw.* 189; 11 *C. B.* 37.

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is worth 40*s.* a-year in perpetuity;" and *Maule*, J., said, "Suppose a man agreed to stand in the claimant's shoes, would it be worth his while to give 40*s.* a-year for his interest in the land?"

This consideration was sufficient for the decision of those cases which, though they raised and decided the question whether principal could be deducted, did so upon statements of facts not showing that the principal paid had created an interest worth 40*s.* a-year beyond *reprises*. Between those cases and the present there are striking and cardinal differences of facts. No doubt expressions were used by the judges indicating an opinion that the payments on account of the principal were to be considered as charges, which unquestionably they were in one sense, *viz.*, that until enough had been paid on account of principal to make the equity of redemption worth the purchase of a freehold of 40*s.* a-year, there was nothing to satisfy the first condition in the statute. The concurrence of *V. Williams*, J., in *Robinson* v. *Dunkley*, is conclusive as to the true scope of those authorities. In the present case both conditions are fulfilled. The mortgage is for £300, principal to be repaid with interest in ten years, by instalments of £3 9*s.* a-month, making £41 8*s.* a-year, or, in all, £414; so that the proportion of principal to interest is ascertained by the deed, and it is found as a fact. The property can, in fact, be redeemed for a present payment of £73 1*s.*; the payments remaining to be made, if paid at the day, amount to £82 16*s.* The annual value above all charges, except the mortgage, is £31 4*s.*, so that the equity of redemption, if sold at the ridiculously low price of five years' purchase, would produce a sum sufficient to pay off the whole remaining charges and

leave a balance, which, if invested in Consols, would produce more than 40*s.* a-year. Why? For this simple reason, because the payments made by the mortgagor were not all "*reprises*," but to the extent of two-thirds, or thereabouts, paid (and found by the case to have been paid) on account of principal, they were investments, and permanently beneficial investments, by and for the mortgagor, as much as, or rather more, than if he had paid them into his bankers, to be ready for the mortgagee when he chose to call for his money. Each of these payments, to the extent it represented, was a purchase for the mortgagor of so much of the mortgagee's interest in the land, each of them added to the value of the mortgagor's estate, and now enures to his benefit. Each of them was, therefore, "expended" by and for him; each would, in a properly kept account, go to investment of capital, and would not be mere outgoings. None of them was a "*reprise*," in the proper sense, of something taken back for the mere temporary use of the land. As for the payments being pre-appointed to be made on certain days, this cannot alter their juridical character. The payment of the principal is invariably pre-appointed for some day. It is for the convenience of the parties not to alter the relation between them, that several days are mentioned instead of one. It follows, from what has been said, that the second condition of the statute of 8 *Hen.* 6, c. 7, as modified by the subsequent Acts, giving the franchise to a mortgagor, is also complied with, because, deducting from £41 8*s.* the two-thirds which the case finds to be referable to principal, there remains £13 16*s.*, which, deducted from £31 4*s.*, leaves a clear substantial present annual value of £17 8*s.* In effect and substance the

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claimant has a freehold worth, at twenty years' purchase, £630, less £73 1*s.*—£556 19*s.*; and, deducting out of the two years' payments that remain what can properly be called "*reprises*," he can "expend" £17 8*s.* by the year. Thus, both upon the reason of the matter, and according to the distinct authority of *Erle*, C.J., and his companions, in *Robinson* v. *Dunkley* (*a*), the decision against the right to vote was wrong, and ought to be reversed.

MONTAGUE SMITH, J. I am of the same opinion; and, in consequence of the previous decisions in this Court, I desire to add the reasons for my judgment.

The claimant (who is the appellant) being seised in fee of land and houses, mortgaged them, by a deed dated the 12th *February*, 1863, to the *Leicester Building Society*, to secure £300 advanced by the society on three shares held by the claimant as a member of the society, to be repaid, with capitalised interest, in ten years, by monthly payments of £3 9*s.*

The mortgage was in fee, subject to a proviso for redemption upon payment by the claimant during ten years of the subscriptions, redemption moneys, and fines payable by him in respect of his three shares according to the rules of the society, and certain tables annexed to them; and the deed provided, that when the £300 and all other payments should have been satisfied, the security should be in a certain prescribed manner discharged. A power was contained in the deed enabling the trustees, in case of default in the payment of the instalments, to take possession of the property, and

(*a*) *Hopw. & Ph.* 1; 15 *C. B. N. S.* 478.

sell the same, to satisfy what might be due on the security.

The case finds that the claimant has always been in the actual possession of the property, that he has kept up the payment of all his instalments, having paid in all £350, and that he was entitled to redeem the property by a present payment of £73 1*s.* It is also found that the annual value of the property is £31 4*s.* The Revising Barrister further finds, which the mortgage deed and rules enabled him to do, that the interest, which is not more than seven per cent., is capitalised, for the whole term, and added to the sum borrowed; and that, although no apportionment is made in form, yet if the monthly instalments, which amount to the annual payment of £41 8*s.*, were apportioned, two-thirds of it would be paid in discharge of principal, and one-third only in payment of interest. It is obvious, from these findings, that in substance two-thirds of the annual payment of £41 8*s.*, *viz.*, £27 12*s.*, goes in every year to reduce the principal, and so to increase the beneficial interest of the claimant in the estate; and one-third, *viz.*, £13 16*s.* only, is attributable to interest, and that this latter sum, when deducted from £31 4*s.*, the annual value of the property, leaves £17 8*s.* as the clear beneficial annual value of the estate to the claimant.

The Revising Barrister held, in accordance with what he considered to be the effect of the decided cases, that the whole amount of the payments to the society was a charge upon the estate, and should be deducted from the annual value, and that as this deduction would reduce such value below 40*s.*, the name of the claimant should be erased from the list of voters.

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But on the other hand he found, as the fact undoubtedly is, *that if so much only of the annual payments as represented the interest on the loan ought to be deducted from the annual value, then the claimant had a freehold of the annual value of* 40*s.*, and if this Court should hold that this was the proper deduction, he declared that the name of the claimant was to be restored to the list.

It appears to me that this last declaration of the Revising Barrister ought to prevail; for, on the above facts and findings, I come to the conclusion that the claimant has a freehold of the value of more than 40*s.* by the year above all charges. The question to be decided is, whether so much of the above annual payment as represents the repayment of the principal of the mortgage debt is a charge within the meaning of the statute 8 *Hen.* 6, to be deducted from the annual value of the freehold.

The 8 *Hen.* 6, c. 7, requires the voter "*to have free land or tenement to the value of* 40*s. by the year above all charges*" (*outre les reprises*).

The 6 *Vict.* c. 18, s. 74 (after reciting 2 *Will.* 4, c. 45, ss. 23 and 26) enacts, "that no mortgagee of any lands, &c., shall have any vote for, or by reason of any mortgage or estate therein, unless he be in the actual possession or receipt of the rents and profits thereof; but that the mortgagor in actual possession, or in receipt of the rents and profits thereof, shall and may vote for the same, notwithstanding such mortgage."

These are the statutes to be expounded. The statute (6 *Vict.*) expressly enacts, that a mortgagor in possession shall *vote notwithstanding the mortgage*, and, as a consequence, notwithstanding the mortgage debt.

It has been settled, and although at one time much

questioned, it is not now disputed, that the interest on the mortgage debt is a charge to be deducted from the annual value of the land. It was so decided by several election committees (*a*).

The Act 28 *Geo.* 3, c. 36, s. 6, required a declaration from the voter that he had "an estate of the clear yearly value of 40*s.* over and above the *interest of any money secured by mortgage upon the said estate.*" This enactment, whilst it is a clear statutory declaration that the interest on a mortgage debt is to be deducted from the annual value, amounts, by necessary implication, to an equally clear declaration, that "the money secured by mortgage," that is, the principal, need not be deducted.

If the principal of the mortgage debt were to be deducted in estimating the yearly value of the land, few mortgagors in the year when the principal fell due, or in any future year whilst it remained due, would be entitled to vote, for the principal would in almost all cases exceed the yearly value of the estate. It is clear that this was not the intention of Parliament, for, as I have already observed, it would be opposed to the express enactment of 6 *Vict.* c. 18, s. 74, that a mortgagor in possession may vote, notwithstanding the mortgage, which of course assumes the existence of the mortgage debt.

Then, can it make a substantial difference that the principal money is to be repaid by periodical instalments, biennial, annual, monthly, or otherwise? It is equally the principal money, and, so far from this distinction creating a difference adverse to the right to

(*a*) See the cases collected in *Rogers on Elections.*

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vote, it surely is in favour of the mortgagor that he is not liable to pay the whole principal at once.

If the question had been *res integra*, I confess I should have felt little hesitation in coming to a conclusion in favour of the claimant, but former decisions of this Court undoubtedly occasion some difficulty.

In *Copland* v. *Bartlett* (*a*), there was a monthly payment of 15*s.*, but the case did not contain any finding to distinguish principal from interest as the present case does, and the Court likened the whole payment to a payment of interest on a mortgage, and so gave judgment against the right to vote.

The next case, *Lee* v. *Hutchinson* (*b*), is not an authority against the respondent. It decides no more than that the interest on the mortgage money must be deducted from the annual value. The observations made by *Jervis*, C.J., and *Maule*, J., on the statute 28 *Geo.* 3, c. 36, are consistent with a decision in favour of the present claimant.

In the case of *Beamish* v. *Stoke* (*c*), the mortgage deed provided for a weekly contribution of 4*s.* 6*d.*, which, when paid, was appropriated by the secretary to three objects, *viz.*, 1st, to payment of interest; 2ndly, the mortgagor's share of the incidental expenses of the society; and, 3rdly, the remainder to reduce the principal.

The Court, although so much of the payment as was appropriated to interest did not reduce the value below 40*s.*, held that, inasmuch as the whole payment did so reduce it, the claimant was not entitled to vote.

(*a*) 2 *Lutw.* 102; 6 *C. B.* 18.
(*b*) 2 *Lutw.* 159; 8 *C. B.* 22.
(*c*) 2 *Lutw.* 189; 11 *C. B.* 29.

The judges there said, "that the case was governed by *Lee* v. *Hutchinson*, which only followed *Copland* v. *Bartlett*." Now, certainly, in *Lee* v. *Hutchinson* (in which the interest alone exceeded the annual value), the point assumed to have been decided by it did not arise. It may be observed, also, that in *Beamish* v. *Stoke*, the value of the equity of redemption was not found. In the course of the argument of that case, *Jervis*, C.J., said, "The case does not find that that which the party has already paid towards the purchase-money is worth 40*s.* a year in perpetuity." In the present case, facts are found from which it distinctly appears, that what the claimant has so paid is worth much more than 40*s.* a year.

But whatever may be the true effect of the cases on which I have now commented, I think that the later case of *Robinson* v. *Dunkley* has shaken, and, in my opinion, overthrown their authority, supposing they are to be construed as the respondent seeks to do.

In *Robinson* v. *Dunkley* (*a*), the society had advanced to the claimant £73, and by his mortgage to the society he was to repay the amount by monthly sums amounting to £4 a year.

The deed did not apportion these payments between principal and interest. It appeared that the value of the land was only £3 per annum, and that in the qualifying year the monthly sums were payable, so that if the full amount of them was deducted from such value, a clear 40*s.* did not remain to the voter for that year, but, as it also appeared that £71 of the principal had been paid off on the 31st *January*, the

(*a*) *Hopw. & Ph.* 1; 15 *C. B. N. S.* 478.

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Court held, that the Revising Barrister was right in finding that the claimant had a freehold of the value of 40*s.* per annum, and in retaining his name on the list of voters, inasmuch as, notwithstanding that the annual payment exceeded the annual value for that one year, the claimant had a clear beneficial interest in the land beyond the encumbrance of more than 40*s.* by the year.

It being plain that the monthly payments in the case of *Robinson* v. *Dunkley* would, if deducted, have reduced the value in the particular year below 40*s.*, it follows that, if the case of *Copland* v. *Bartlett* was decided on the ground that the whole of these payments are to be deducted from the annual value, whatever may be the value of the equity of redemption, then the decision in the later case is opposed to that, *ratio decidendi*, and overrules it, and if that was not the *ratio decidendi* in *Copland* v. *Bartlett*, then that case is not necessarily in opposition to the right of the claimant in the present appeal, where the Revising Barrister has found that, after deducting the charge for interest, there is an annual value accruing to the mortgagor of more than 40*s.*

I own that I can interpret *Robinson* v. *Dunkley* in no other way than as a decision, that so much of the monthly payments as represented a repayment of principal money did not form a charge on the annual value. It is true, that in that case a large amount of the principal money had been paid off; but so long as the whole mortgage debt remaining due does not reduce the value of the equity of redemption below 40*s.* by the year, and the interest does not absorb it, the largeness or smallness of the amount paid off cannot make an essential difference.

Treating the question on principle, I confess I can see no distinction between a mortgagor who has to repay the mortgage debt in a single sum, and one who has to repay it by periodical payments, except one in favour of the latter.

In substance the latter would be, from the nature of things, in a sounder position, for he would on payment of each instalment relieve his land of part of its burden, and increase the beneficial value of it, whilst the former was suffering the whole burden to remain upon it, and this anomaly would occur from a contrary view, *viz.*, that a man who had borrowed £100 on his land, payable by instalments, and had paid off £90, would have no vote, whilst the man who borrowed £100, payable in one sum, and had paid off nothing, would be entitled to vote.

But in neither case, as it seems to me, can the principal debt be properly deemed a charge on the annual value. It is a charge on the *corpus* of the estate, and every payment of an instalment of it is so much added to the beneficial interest of the mortgagor. If, indeed, the whole mortgage debt is so large in proportion to the estate that it would cover the full value of it, or so nearly as not to leave a beneficial interest of the yearly value of 40*s.* to the mortgagor, then there would be an entire failure of such an interest in the freehold as would entitle the mortgagor to a vote.

In the present case, the principal debt does not produce this consequence, and for the reasons above referred to, I think the decision of the Revising Barrister should be reversed.

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BRETT, J. I agree entirely and absolutely in the judgment given by my brother *Willes*. I can see no answer to the argument used in that judgment.

The only doubt I have had in this case, and I must confess it was a very strong one, was, whether the Court could be allowed to come to its present conclusion after the cases of *Copland* v. *Bartlett* (*a*) and *Beamish* v. *Stoke* (*b*) had been accepted for so many years, and after the rights of so many persons had been decided by Revising Barristers on the faith of that interpretation of the law.

Decision reversed.

Attorneys—For Appellant, *A. Tibbitts*.
For Respondent, *John Mortimer*, agent for *T. Spooner, Leicester*.

(*a*) 2 *Lutw.* 102; 6 *C. B.* 18. (*b*) 2 *Lutw.* 189; 11 *C. B.* 29.]

ABEL, Appellant; LEE, Respondent.

Jan. 25.

Non-payment of a poor-rate made *before*, but excused (under 54 *Geo.* 3, c. 170, sect. 11) *after* the commencement of the qualifying year:—*Held*, under 30 & 31 *Vict.* c. 102, sect. 3, subsect. 4, a disqualification for the borough franchise.

AT a Court held by the Barrister appointed to revise the lists of voters for the city and borough of *New Sarum*, *Frederic Abel*, of, &c., the appellant, duly claimed to be inserted in the list of inhabited occupiers under the provisions of 30 & 31 *Vict.* c. 102.

It was established that the said *Frederic Abel* was duly qualified to be registered in the said list, unless he failed to be qualified for the following reason:—

On the 18th of *June*, 1869, a poor-rate was duly made and allowed by the justices for the several parishes within the said city and borough. *Frederic Abel* was duly rated to the said poor-rate in respect of the qualifying premises, and the amount thereof thereupon became payable from him in respect of the same, but he has never paid the said poor-rate, or any part thereof.

The next poor-rate was made in the month of *October* following, when the owner of the qualifying premises was rated to the said *October* rate in the place of *Frederic Abel*, and the said owner has since been rated to all subsequent poor-rates under the provisions of "The Poor Rate Assessment and Collection Act, 1869."

Subsequently to the becoming payable of the rate of *October*, 1869, *Frederic Abel* was duly excused, by order of the justices, from payment of the poor-rate of the 18th of *June*, 1869, under the provisions of the statute 54 *Geo.* 3, c. 170, s. 11.

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The seventy-four persons whose names were set out in the schedule claimed to be inserted in the lists of the said city and borough under similar circumstances.

The Revising Barrister held that *Frederic Abel* was not, nor were any of the said persons, entitled to be inserted in the said lists. He so decided on the ground that, notwithstanding the said excusals, they had not, nor had any of them, on or before the 20th of *July*, 1870, *bonâ fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor-rates that had become payable by them in respect of the qualifying premises within the 30 & 31 *Vict.* c. 102, s. 3, sub-sect. 4.

Due notice of appeal was given, and the appeals were consolidated.

If the Court should be of opinion that this decision was wrong, the register was to be amended by inserting in the said list the names of *Frederic Abel* and the said other persons whose names were in the schedules.

Wills, for the appellant. The question is, whether the appellant is disqualified by nonpayment of a rate made in *June*, 1869, and consequently before the 31st of *July*, 1869, the day on which the qualifying year commenced. No question arises as to the rate made in *October*, 1869. For that rate the owner was rated, and it never became payable by the appellant. That it was duly paid may be assumed, for the Revising Barrister does not state that it was not, and his mode of stating the case is not to set out all the elements of qualification, but to state those facts on which he relied as constituting a disqualification.

The question, then, which arises as to the *June* rate,

turns on the 30 & 31 *Vict.* c. 102, s. 3, sub-section 4, and to bring himself within that sub-section the appellant must have, "on or before the 20th day of *July*," 1870, "*bonâ fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor-rates that have become payable by him in respect of the said premises up to the preceding 5th day of *January*." It is submitted that that sub-section was not intended to be more general than those which precede it, and that it only extends to rates made during the qualifying year.

[WILLES, J. The words of the 4th sub-section are quite general, and so is the language of Schedule E referred to in sect. 28.

BRETT, J. The words of 2 *Will.* 4, c. 45, s. 27, are also quite general. There payment is required of "all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th day of *April*." The 11 & 12 *Vict.* c. 90 substitutes the 5th of *January* for the 6th of *April*, but in every case the language is general.

MONTAGUE SMITH, J. On your construction a man might every year leave unpaid the rates that are payable in the early part of the qualifying year. The language of sub-section 4 is clearly large enough to exclude so unreasonable a construction—a construction which the Legislature could never have intended.]

On the other hand, if the sub-section apply to all rates in arrear, the extraordinary consequence will follow in the case of a person excused (like this appellant) from a

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particular rate, that he never afterwards can vote for the premises in respect of which he has been so excused. Under the 54 *Geo.* 3, c. 170, s. 11, his name is struck out of the rate.

[BRETT, J. Why can he not pay or tender the rate under sect. 30 of the Reform Act like a person omitted from the rate?]

The words of the 54 *Geo.* 3, c. 170, s. 11, under which the rate is excused, are peculiar. That section, after empowering two or more justices, on the application of the person rated, and proof of his inability to pay through poverty, to excuse him from payment, and strike his name out of the rate, further provided that "the sum at which such person was so rated in such rate or cess *shall not thereafter be collected*, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same." It follows that a person excused can never afterwards pay or tender the excused rate, inasmuch as there is no one who can lawfully accept the payment. The deficiency in the rate arising from a person being excused, would, in the natural course of things, be distributed over the succeeding rate. The case does not resemble that of a person omitted from the rate. The rate in such a case has never become due. Here the rate has become due, but the appellant has got released from payment of it under circumstances which preclude him from paying it at any future date.

[MONTAGUE SMITH, J. In this case, the rate *was* payable by the appellant during the qualifying year,

since he was not excused till the month of *October* in that year, or afterwards.]

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The rate did not *become* payable during the qualifying year.

[MONTAGUE SMITH, J. The words are *primâ facie* against you; and you ask us to limit their generality by putting a very strict construction upon them.

BRETT, J. Under 6 *Vict.* c. 18, s. 35, the Revising Barrister has power to call before him the overseers of past years.]

There are many other matters for which he might require their attendance besides the question of non-payment of rates—for instance, on an inquiry as to the value of the subject-matter of qualification. The requirement in 6 *Vict.* c. 18, s. 35, of the production of the rates in the Revising Barrister's Court, is limited to rates made between the 6th of *April* in the year then last past, and the last day of *July* in the then present year. That limit is hardly consistent with the notion of an inquiry being made as to the payment of *all* rates in arrear. In 31 & 32 *Vict.* c. 58, s. 28, that limit is again repeated, with the substitution of the 5th of *January* for the 6th of *April*. The 2 *Will.* 4, c. 45, disqualifies a person who has received parochial relief within the year of qualification, but on the Revising Barrister's construction a person, once excused from payment of a rate, would be disqualified for ever. A person who had not paid his rates made during the qualifying year, would of course, in any view, be dis-

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qualified, notwithstanding he had been excused by justices under 54 *Geo.* 3, c. 170.

No one appeared for the respondent.

BOVILL, C.J. The case turns on the 4th sub-section of sect. 3 of "The Representation of the People Act, 1867;" and between the language of that sub-section and of the two previous sub-sections, which prescribe the period of occupation and rating, there is a marked distinction. Thus the period of occupation prescribed by sub-section 2 is limited to the twelve calendar months prior to the 31st *July*, and the period of the rating prescribed by sub-section 3 is similarly limited to "the time of such occupation." But on coming to sub-section 4, we find no mention at all of twelve calendar months, but a limitation altogether different. Payment by the person to be qualified must, by that sub-section, be made "in respect of *all* poor-rates that have become payable by him in respect of the said premises *up to the preceding 5th day of January*," and, looking to the difference in the language employed, I presume that difference was intentional. Indeed, if the only rates, of which the 4th sub-section requires payment, were those made within the qualifying year, its operation would be limited to rates made, not during a period of twelve calendar months, but between the 31st of *July* and the 5th of *January* following. The matter seems clear enough on the Act itself, but on referring to the "Reform Act, 1832," it is put beyond a doubt. Sect. 27 of that Act, after providing against a person being registered unless he has occupied the premises in question for twelve calendar months previous

to the 31st of *July*, and been rated for them to the relief of the poor "during the time of such his occupation," proceeds: "nor unless such person" shall have paid on or before the 20th day of *July*," not "all *such* poor-rates," nor "all poor-rates made during the *time* of such his occupation, "but "*all* the poor's rates," "which shall have become payable from him in respect of such premises *previously to the 6th day of April* then next preceding." Further, it is to be observed, that that requirement extends not only to poor-rates, but also to assessed taxes, and as they are "to have become" payable "*previously* to the 6th day of *April*," it cannot refer to taxes assessed during the qualifying year. I think that that section is manifestly general, and that it was intended to apply to all rates and assessed taxes up to the time specified, whether imposed during the qualifying year or not; and although in the Act of 1867 there is no mention of assessed taxes, the two Acts must receive the same construction. There are also other enactments bearing out the same view. By the 6 *Vict.* c. 18, s. 35, the overseers in boroughs are required to produce, at the Revising Barrister's Court, all poor-rates made between the 6th of *April* in the previous year, and the 31st of *July* in the then present year, showing, therefore, that rates made before the commencement of the qualifying year are to be produced. And in 31 & 32 *Vict.* c. 58, s. 28, there is a similar enactment as to counties. Again, by sect. 28 of 30 & 31 *Vict.* c. 102 (the Act on which the present point arises), "where any poor-rate due on the 5th day of *January*" remains unpaid on the 1st of *June* following, the overseers are required "to give or cause to be given a notice in the form set forth in Schedule E;" which form again

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requires payment of *all* the poor-rates which have become due in respect of the premises *up to the 5th of January* then last. Looking at these various provisions, I think the true construction of sub-sect. 4 is, that all poor-rates that have become payable by the occupier in respect of the premises up to the 5th of *January*, whether made within the year of occupation or not, are within its operation. Mr. *Wills* says, that that might amount to a perpetual disqualification; but I do not think that consequence necessarily follows, and here, at all events, the case is clear, as the rate was undoubtedly *payable* by the appellant during the qualifying year. The Legislature has not made the circumstance of the payment of the rate being excused equivalent to the payment of it; and when the question of perpetual disqualification arises, it will be time to consider it. On that I express no opinion. But, looking to the absence of any qualification in the 4th sub-section, which can restrict its application here, I think this case clearly within the Act.

WILLES, J. I am of the same opinion. The question is, do the words in 30 & 31 *Vict.* c. 102, s. 3, sub-section 4, "all poor-rates that have become payable by him in respect of the said premises up to the preceding 5th day of *January*," mean only such as have been made and become payable from the 31st of *July* up to the 5th of *January, i.e.*, during a period of five months and five days, or do they apply to *all* arrears of poor-rates "payable by him in respect of the premises up to the 5th of *January*." Further light is thrown on that question by sect. 29 of the same Act, which requires the overseers in boroughs "to make out a list containing

the name and place of abode of every person who shall not have paid," on or before the 20th day of *July*, "*all* poor-rates which shall have become payable from him in respect of any premises within the said parish *before the fifth day of January* then last past." That language is quite general, and in no way connected with the limitations in the earlier sub-sections of sect. 3. The list seems intended to be made according to the ordinary mode of keeping an account, and to include all rates that have become payable before the 5th of *January*. I concur without hesitation in my Lord's opinion that the wider meaning is that which the Legislature intended should be put on the words of the 4th sub-section, both from the ordinary signification of the words themselves, and also having regard to the other sections referred to. Mr. *Wills*, indeed, did not deny that the language of the section taken by itself was against him, but he urged that so great an absurdity would follow from adopting that construction that we ought to modify the language so as to avoid the absurdity. No doubt there is a rule laid down that the grammatical construction is to be adhered to, unless it involve some absurdity or repugnancy, and of that qualification I fully recognise the force where the absurdity or repugnancy appears on comparison of the language to be interpreted with other language in the same Act, or in some other Act which is *in pari materia*. But that any judge has the power, because the language of the Legislature brings about some consequence which to his idea is absurd, so to modify the language employed as by some torture of words to bring it into conformity with his own views of what is reasonable or right, is a notion which I distinctly repudiate. Mr. *Wills* urged

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that the absurdity that would arise appears on comparing the Act under discussion with the 54 *Geo.* 3, c. 170, s. 11, under which this appellant was excused from payment of the rate. His argument might be good for modifying the effect of the 54 *Geo.* 3, c. 170, but is none whatever for modifying the 30 & 31 *Vict.* c. 102. The 54 *Geo.* 3, c. 170, s. 11, provides a machinery (which, however, can only come into operation on the application of the person himself, setting up his poverty) under which the justices are empowered, with the consent of the overseers, to excuse the applicant and strike his name out of the rate. And it is further provided that the sum at which he was so rated "shall not thereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same." Now, even assuming the appellant to be in the condition of never being able to vote for that particular house, upon the ground that the poor-rate once excused can never thereafter be paid, it is a condition into which he has brought himself by his voluntary act. If it involve an absurdity, that might be avoided by our holding in analogy with the old Bankrupt Law that the legal liability is discharged, but that the moral obligation remains; and it may be that, notwithstanding the appellant is excused, the overseers would be justified in accepting payment and ought to do so, and that a tender would entitle the appellant to be placed on the rate. The case, however, is an extreme one, for the whole notion of a perpetual disability is founded on the assumption that under every change of circumstances the appellant continues in the same house. An extreme case may be valuable as testing a general principle, but

not merely because it constitutes a hardship in a particular case. The principle of legislation is to meet the cases that most frequently arise, and to provide for the general and not for the particular. But even assuming that we could modify the language of sub-section 4, as Mr. *Wills* has contended we might, I am not satisfied we ought so to modify it as to exclude the rate in question from the operation of the sub-section. The rate not being excused till *October*, or later, there was (as my brother *Smith* has pointed out) during the qualifying year, a period when the appellant, not being then excused, might have paid the rate; but instead of doing so, he, by his own act, got excused from payment. Poor-rate burdens, therefore, existed during the qualifying year, which the appellant might have shared with the other occupiers, but did not.

MONTAGUE SMITH, J. I am of the same opinion, and I think it a plain case. The qualification is given by the third section of "The Representation of the People Act, 1867," and the question turns on the 4th sub-section. Mr. *Wills* has contended that that sub-section requires payment of such rates only as are made within the qualifying year. No doubt the Legislature might so have enacted, but it has not done so. Not only is there an absence of any words of limitation (which one certainly would expect to find, if the limitation were intended), but also an entire change of language from what precedes. Mr. *Wills*, indeed, did not contend that there was any limitation in the words, but his whole argument was directed to the consequences that might follow if we held that there was no such limit in the sub-section as that for which he contended—*viz.*, that a

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person who, under 54 *Geo.* 3, c. 170, had several years ago been excused a rate, would from that time forth be disqualified, although he had never subsequently failed to pay his rates. Such a consequence might be matter of regret, but it would not very frequently occur. And I am not sure that it is a necessary consequence. It may be that the sub-section is limited to rates which remain payable during some part of the qualifying year; or it may be, notwithstanding the clause in 54 *Geo.* 3, c. 170, s. 11, which says that the rate "shall not thereafter be collected," that a man may, although excused under that section, pay or tender the amount of the rate. It is enough to say that it is not plain that the consequence which Mr. *Wills* suggests will follow our decision; but, supposing it would, we must contrast it with the consequences which would follow on our adopting his construction—*viz.*, that the only payment required as a qualification for the franchise would be of such rates as are made between the 31st of *July* and the 5th of *January* following, *i.e.*, during a period of five months and five days. Such a construction appears to me directly opposed to the purposes of the Legislature, and further, it would apply to all persons claiming that franchise, whereas the inconvenience suggested by Mr. *Wills* would affect only a small class.

BRETT, J. The question here, as it was before the Revising Barrister, is whether the claimant is disentitled to the franchise on the ground that he had not paid, on or before the 20th of *July*, 1870, a poor-rate made on the 18th of *June*, 1869, although, under the 54 *Geo.* 3, c. 170, he had, since the 31st of *July*, 1869, been excused from payment. This question divides

itself into two branches. First, was the claimant bound to pay a rate made before the 31st *July*, 1869; secondly, if he was so bound, did the fact of his being excused from payment after the 31st of *July*, free him from that liability. As regards the first question, I think the claimant was bound to pay the rate, and for that I rely on the marked difference between the language of that sub-section and of the previous sub-sections. I may add, if that can properly be referred to, that every word of the 3rd section underwent a painful discussion, and must have been intentionally enacted. My view of the generality of sub-section 4 is, moreover, considerably strengthened by sect. 28, and by the language of Schedule E, referring to "*all* the poor-rates which have become due from you;" and also by sect. 29, in all which the language employed is perfectly general. It is further strengthened by the consideration that in the 6 *Vict.* c. 18, s. 34, there is an express provision, which, in the first instance, requires the overseers to produce at the Revising Barrister's Court all rates made between the 6th of *April* in the previous year, and the last day of *July* in the then present year, and then further empowers the Revising Barrister to require the attendance of any overseer of a past year, or of any officer having the custody of any poor-rate of a past year—provisions wholly inconsistent with the view that the only rates of which the payment is to be inquired into are those made during a period of only five months. A similar remark applies to 31 & 32 *Vict.* c. 58, ss. 28 & 29, containing similar provisions with reference to £12 occupiers in counties. I cannot help thinking that the whole spirit of the legislation on this subject goes to show that the appellant was bound to pay the rate, and

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that the non-payment of it put him *primâ facie* under a disability.

The next question is, did the circumstance of his being excused payment get rid of his disability. Mr. *Wills* says that it did, and that the circumstance of his being excused after the 31st of *July* must have the same effect as if he had been excused before that date; and that if the effect of it be not to get rid of his disability, it must be to exclude him for ever from the franchise. Even if I were satisfied that that would be the consequence, I should not shrink from it; but, at present, I doubt whether it is. It may be that my brother *Smith's* suggestion is correct, that the circumstance of a person being excused before the commencement of the qualifying year might prevent the sub-section from applying. I own, however, that I cannot help thinking that Mr. *Wills'* construction of the 54 *Geo.* 3, c. 170, is too rigid, and that a person excused under it might, nevertheless, tender and pay, and so bring himself within sect. 27 of the Reform Act. But if the suggested difficulty really exist, it cannot alter our construction of the Act. A contrary construction would be entirely opposed to the spirit of this legislation, since a person who owed £30 or £40 for arrears of rates might, by paying his last rate, get his name on the register.

Decision affirmed (*a*).

Attorneys—For Appellant, *Taylor, Hoare, & Taylor*, agents for *Wilson, Thring, & Nodder*.

(*a*) With reference to the payment of rates under 2 *Will.* 4, c. 45, s 27, it may be mentioned that the following passage occurs in *Elliott on Qualifications and Registrations*, 2nd ed. p. 191 :—

"This provision, as to the payment of rates, being quite general in its terms, it was held by some Revising Barristers, that any arrear of rate, however distant the period might be at which it became payable, if left unpaid on the twentieth day of *July*, in the year of registration, had the effect of disqualifying the voter, although the statute only required him to be *rated* in respect of the premises for one year. It will be seen by reference to the statute of 6 *Vict.* c. 18, s. 75, that it will now be sufficient if the person seeking to be registered has paid all rates which have become due from him in respect of the qualifying property for one year previously to the 6th day of *April* then next preceding."

The above passage is referred to on account of the authority of Mr. *Elliott* on questions of registration law, and also because the 6 *Vict.* c. 18, s. 75, was not cited in *Abel* v. *Lee*. Looking, however, to the preamble in sect. 75, as to the doubts which had arisen in regard to the effect of a misnomer, or inaccurate description in a rate, and to the concluding words of the section, "any misnomer, &c., in any rate . . . . notwithstanding," and to the *dicta* of the judges in the case above, it is presumed that, notwithstanding the generality of the language, section 75 should be restricted to cases of misnomer, &c., and not be deemed of such general application as Mr. *Elliott* seems to have thought. The point, however, is not necessarily concluded by the case in the text, because the rate excused being made so recently as *June*, the claimant had not paid all rates, &c. "for one year previously to the 6th of *April*, then next preceding," as required by sect. 75, or, by the later statutes, the 5th *January*. The facts, therefore, did not fulfil the conditions of the statute.

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS,

UNDER THE STAT. 6 VICT. c. 18,

IN

EASTER TERM, 1871,

IN THE

THIRTY-FOURTH YEAR OF QUEEN VICTORIA.

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April 24 (*a*).

THOMPSON, Appellant; WARD, Respondent.

ELLIS, Appellant; BURCH, Respondent (*b*).

A house (originally built for one family) consisted of nine rooms, let out in tenements, some of two rooms, some of one. The rooms were occupied by each tenant exclusively; but the passage and staircase were common to all. The claimant occupied one of these rooms, and was separately rated. The owner did not reside. The outer or street door was never closed, and was without lock or bolt, but had two staples, through which a bolt formerly was, and still might be shot. The Revising Barrister having held that the premises occupied by the claimant were not a "dwelling-house" within 30 & 31 *Vict.* c. 102—

Held, per Willes and *Brett*, JJ., that the decision should be affirmed.

Per Willes, J. The separate dwelling referred to in sect. 61 must be such a dwelling-house as would have been a "house" within the Reform Act, and would answer the description of a house, as interpreted in *Cook* v. *Humber*.

Per Brett, J. That although there need not be a structural, yet there must be a *practical* separation of *the thing occupied*; and "occupied" in sect. 61 means "used;" and the part of the house which the claimant really "used" here, was composed of the part to

IN the first of the above appeals the case stated:—

At a Court held for the revision of the lists of voters

(*a*) The cases were argued in Michaelmas Term, 1870, but are inserted under the date of the delivery of the judgments.

(*b*) For marginal note to *Ellis* v. *Burch*, see *post*, p. 537.

for the city of *Durham*, the name of *George Herbert* appeared in the list of claimants published by the overseers of the township of *Elvet*, as follows :—

Christian Name, &c.	Place of Abode.	Nature of Qualification.	Street, Lane, &c.
Herbert, George	*Old Elvet*	House	*Old Elvet*

In support of the claim the following facts were proved :—

1. The claimant had for above a year prior and up to the 31st of *July* last occupied as a tenant at the rent of £4 10*s.* per annum, one room in a house situate in *Chapel Passage, Old Elvet*, in the township of *Elvet*, in *Durham*.

2. The house consists of nine rooms, and is let out in six several tenements. Of these, three tenants occupy two rooms each, and each of the other tenants occupies one room.

3. The house was originally built for one family. The passage, staircase, and conveniences (consisting of a privy and ashpit), which latter are situate in a yard opposite the passage, are common to all the tenants. Each of the tenants has a separate coal-house in the yard. There is an outer or street door to the passage, which is never closed, and without lock or bolt available, although it retains two staples through which a bolt formerly was and still might be shot.

4. Each tenant has the exclusive use and occupation of his or her respective room or rooms, for which they

which he improperly confined his claim (*viz.*, his room), and the part jointly used by him and others (*viz.*, the passage and staircase).

Per Bovill, C.J., and *Keating*, J., that the decision should be reversed, that the defendant occupied a "dwelling-house" within sect. 61, and for that purpose it was not necessary that there should be structural severance.

Per Keating, J. A man is not a lodger who is separately rated for, and has the exclusive occupation of rooms, or a room in a house, where the owner neither resides, nor exercises any control whatever over the outer door (*a*).

(*a*) For marginal note to *Ellis* v. *Burch*, see *post*, p. 537.

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respectively pay the following rents:—*W. Peacock*, two rooms, £5 10*s.* a year; Mrs. *Elliott*, two rooms, £5 a year; *W. Robson*, two rooms, £5 a year; *G. Herbert* (the claimant), one room, £4 10*s.* a year; *T. Smith*, one room, £4 10*s.* a year; and Mrs. *Bowly*, one room, £4 a year.

5. The owner does not reside on the premises. The name of the claimant appears, as separately rated, in the occupier's column of the rate-book, on all rates made between the 31st of *July*, 1869, and 31st of *July*, 1870; but the landlord, whose name appears in the owner's column of the rate-book, has paid all the rates.

6. The claim was objected to on the ground that the claimant was not an occupier of a dwelling-house within the meaning of the Representation of the People Act, 1867 (30 & 31 *Vict.* c. 102), and was consequently not entitled to be registered as an elector.

7. On the other hand, it was contended that the premises occupied by the claimant constituted, under the interpretation clause (sect. 61) of the Representation of the People Act, 1867, a dwelling-house; and that, by the operation of the 32 & 33 *Vict.* c. 41, ss. 7 and 19, the payment of the rates by the owner should be deemed a payment by the occupier for the purpose of any qualification or franchise, which, as regards rating, depends on the payment of the poor-rate; and that the claimant was therefore qualified as an elector.

8. The Revising Barrister was of opinion that the premises occupied by the claimant were not a dwelling-house within the meaning of the Representation of the People Act, 1867, and disallowed the claim.

If the Court should be of opinion that the premises

occupied by the claimant were a dwelling-house within the meaning of that Act, his name and the names of one hundred and twelve other persons whose claims depended, and were decided, upon the same points of law, were to be inserted in the list.

Littler, for the appellant, contended that the appellant was entitled to be registered as the occupier of a "dwelling-house" within 30 & 31 *Vict.* c. 102, s. 3. That, in the first place, except as regards value (which under 30 & 31 *Vict.* c. 102, was not material) the subject of his occupation was a "house" within 2 *Will.* 4, c. 45, s. 27. As to this, that the case was not distinguishable from *Henrette* v. *Booth* (*a*), as much structural severance existing here as there; and, indeed, the only difference on the facts was, that there the subject of occupation consisted of two rooms (opening one into the other), and here of only one room. A door to the street of the character described in the case—*viz.*, without any lock or bolt, and which never was closed—could not be deemed an outer door, but the real outer door was the door of the appellant's room opening on the common passage. There it was that he communicated with the outer world; there an inquirer would knock, and a postman deliver letters. Besides, in another sense it was his outer door, as constituting the protection of his abode against robbers, or, in the words of Lord *Mansfield*, in *Lee* v. *Gansel* (*b*), his "extremity of obstruction." Lord *Mansfield* there expressly pointed out the ground of the rule, that an outer door might not be broken open to execute process,

(*a*) *Hopw. & Ph.* 23; *S. C.*, 15 *C. B. N. S.* 500.

(*b*) *Cowp.* 1.

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viz., that it would leave the family within exposed to robbers. And with reference to the question what constituted a house, Lord *Mansfield* there said, that, "if that, which was one house originally, comes to be divided into separate tenements, and there is a distinct outer door to each, they will be separate houses." In *Cuthbertson* v. *Butterworth* (*a*), and *Wilson* v. *Roberts* (*b*), the subject of occupation formed substantially an unsevered portion of a house, whereas, here it formed a severed portion. Here the appellant's room was as much a "house" as the rooms of an undergraduate at the university, which were held in *Bakewell* v. *Peters* (*c*), to be "houses" within the Reform Act, and, therefore, not "lodgings." That further it was within the definition of a "dwelling-house" given by *Willes*, J., in *Brewer* v. *M'Gowen* (*d*).

But, secondly, he contended, that under 30 & 31 *Vict.* c. 102, structural severance was not essential to the "dwelling-house" franchise; for if it had been, the Legislature would have said so expressly. The language of the new Act being different from the old, the difference must have been intentional. By the express words of sect. 61, "dwelling-house" included "*part* of a house," if "occupied as a separate dwelling, and separately rated." The subject of the appellant's occupation satisfied that requirement. It was found as a fact to be separately rated. It was occupied by the appellant separately as his dwelling. The landlord not residing, nor exercising control over

(*a*) *Ante*, p. 183; *S. C.*, *L. R.* 4 *C. P.* 523.

(*b*) *K. & G.* 430; *S. C.*, 11 *C. B. N. S.* 50.

(*c*) *Ante*, p. 251; *S. C.* (*nomine Barnes* v. *Peters*), *L. R.* 4 *C. P.* 539.

(*d*) *Ante*, p. 283; *S. C.*, *L. R.* 5 *C. P.* 239.

the premises, if the appellant was not the "occupier" of the dwelling for which he was rated, no one at all was the occupier. Besides, the appellant could not be deemed a mere lodger, on the ground pointed out by *Maule*, J., in *Toms* v. *Luckett* (*a*), *viz.*, that the owner of the house did not retain his general character as master of the house—a test cited with approval by *Willes*, J., in *Smith* v. *Lancaster* (*b*). He also cited the *Queen* v. *The Mayor of Eye* (*c*), where *Littledale*, J., said, that "If there be no landlord residing in a house, half a dozen different persons may be stated to have dwelling-houses within it." And *Coleridge*, J., said, that "the passage was no more than part of the street." He distinguished such cases as club chambers, as cases of joint occupation. He also referred to *Downing* v. *Luckett* (*d*).

Sir *J. Karslake*, Q.C. (*Pinder* with him), for the respondent, contended that the appellant was not the occupier of a "dwelling-house" within 30 & 31 *Vict.* c. 102, s. 3. First, he would not be the occupier of a "house" within 2 *Will.* 4, c. 45, s. 27, even if the value were sufficient. For structural severance was essential to the "house" franchise, and on that point *Cook* v. *Humber* (*e*) was decisive; and all the judges who decided *Henrette* v. *Booth* (*f*) professed, in deciding it, to recognise the authority of *Cook* v. *Humber* and the principles there laid down. Besides, in *Henrette* v. *Booth* (*f*) the door out of the appellant's room, communicating with the landing outside, was

(*a*) 2 *Lutw.* 19; *S. C.*, 5 *C. B.* 23.

(*b*) *Ante*, p. 287; *S. C.*, *L. R.* 5 *C. P.* 246.

(*c*) 9 *Ad. & El.* 670, 680.

(*d*) 2 *Lutw.* 33; *S. C.*, 5 *C. B.* 40.

(*e*) *K. & G.* 413; *S. C.*, 11 *C. B. N. S.* 33.

(*f*) *Hopw. & Ph.* 23; *S. C.*, 15 *C. B. N. S.* 500.

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found as a fact to be the outer door, whereas here the only door found to be an outer door was the door into the street. The cases of *Score* v. *Huggett* (*a*), and *Toms* v. *Luckett* (*b*), could only be supported on the ground that the question there referred by the Barrister to the Court was one of occupation only, all questions of the sufficiency of the subject-matter of qualification being thus excluded.—*Rogers on Elections* (*c*).

Secondly, he contended that the 30 & 31 *Vict.* c. 102, s. 3, had not extended the law as to the nature of the tenement which qualifies as a dwelling-house, except as regards value; and that structural severance was still essential to such a franchise. It was possible such a case as *Henrette* v. *Booth* (*d*) might come within the general description of a "house" in 2 *Will.* 4, c. 45, s. 27, and yet not be a "dwelling-house" within 30 & 31 *Vict.* c. 102, s. 3. Probably, the definition of a dwelling-house in sect. 61 was introduced *ex abundanti cautelâ* to prevent doubts being raised whether parts of houses structurally severed would confer the new "dwelling-house" franchise. For in an Act which conferred new franchises, *viz.*, the "lodger" and "dwelling-house" franchises, it was natural there should be a definition given of the word "dwelling-house," although no extension might be intended by it. And although the Act gave no corresponding definition of the word "lodger," the 7th section was a guide to the class of persons whom the term "lodger" was intended to comprise. While the possibility contemplated by the 7th section of a house being *wholly let*

(*a*) 1 *Lutw.* 199; *S. C.*, 7 *M. & G.* 95.
(*b*) 2 *Lutw.* 19; *S. C.*, 5 *C. B.* 23.
(*c*) Page 73, 11th Edition.
(*d*) *Hopw. & Ph.* 23; *S. C.*, 15 *C. B. N. S.* 500.

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out in lodgings, amounted in effect to a legislative declaration that a person might be a lodger within the Act, though lodging in a house in which the landlord did not reside. Consequently no substantial distinction could be drawn, as regards qualification, between the appellant's *status* and that of a lodger. A lodger, like the appellant, must, under sect. 4, occupy "separately, and as sole tenant." The question of lodger or occupier could not turn on the residence or non-residence at any particular moment of the landlord; and although the appellant's room was separately occupied by him, the passage and staircase were not, but were either in the occupation of the landlord, or else in the joint occupation of all the tenants; and either view was equally fatal to the appellant's claim, based, as it was, on separate occupation.

Littler replied.

Cur. ad vult.

ELLIS *v.* BURCH.

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The claimant occupied one room on the ground floor, and another on the floor above it, and was separately rated. He and the only other tenant had each control of the outer door, the owner not residing. The Revising Barrister decided that the rooms did not consti-

AT a Court held for the revision of the lists of voters for the city of *Exeter*, the respondent objected to the name of the appellant being retained upon the list of persons entitled to vote in the election of members for the city in respect of his occupation of a dwelling-house situate, &c. The facts proved were these:—

1. The appellant was, on the 31st of *July*, 1870, and had been, during the whole of the preceding twelve calendar months, the occupier of two rooms in a seven-roomed house in *Prospect Place*, of which a Miss *Avery* was the owner. He occupied these rooms as tenant to

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tute a "dwelling house," *Held, per Willes* and *Brett*, JJ., that the decision should be affirmed. *Per Bovill*, C. J., and *Keating*, J. that it should be reversed.

Miss *Avery*, at an annual rent of £6 10*s.*, and the rooms were separately rated, and he was separately rated in respect of them to all rates which had been made for the relief of the poor during the aforesaid twelve months, and by his agreement with Miss *Avery*, such rates were to be paid by her, and had been duly paid accordingly. All other rates and assessed taxes requisite to be paid in respect of the premises occupied by the appellant were duly paid. The rest of the house, *viz.*, five rooms, was occupied by one *Chambers*, also as tenant to Miss *Avery*, at an annual rent of £9 11*s.* 9*d.*, she paying all rates and taxes, and he was separately rated, and the part of the house so occupied by him was separately rated to the relief of the poor. Miss *Avery* did not reside on the premises.

2. The house had a front door, which was generally kept open by day and shut by night, being fastened by an ordinary latch and bolt. The door was fastened sometimes by the appellant and sometimes by *Chambers*. Neither had any right to exclude the other from the use of the front door. There was a lock, but the key had for some time been lost. Inside the front door was a passage, on the left side of which was a room occupied by the appellant, and used by him as a sitting-room, and for cooking his victuals in. On the right side of the passage was a sitting-room occupied by *Chambers*, behind which was a kitchen, also occupied by *Chambers*, and access to which was gained by a door at the back of his sitting-room. At the end of the passage was a staircase, used in common by the appellant and *Chambers*, leading to the first-floor. At the top of this staircase was a landing, on one side of which was a room occupied by the appellant, and used by

him as his bed-room, and situate immediately over his other room on the ground floor. On the other side of the landing was a room occupied by *Chambers*, and used by him as a bed-room. From this landing there was another flight of stairs leading to the second story, on which were two rooms in the sole occupation of *Chambers*.

3. Neither the appellant nor *Chambers* could get from their rooms on the ground-floor to their bed-rooms on the first-floor without going out into the passage and up the staircase above referred to.

4. There was no privy or water-closet in the house; but there was a water-closet at the end of the row of houses, common to the house in question, and three others.

5. The question for decision was, whether the two rooms thus occupied by the appellant did or did not constitute a dwelling-house within the meaning of the "Representation of the People Act, 1867," 30 & 31 *Vict.* c. 102.

6. The Revising Barrister decided that they did not, and therefore expunged the name of the appellant from the list. The appellant was found to be in all other respects qualified to be registered.

7. The names of twelve other persons were expunged from the list upon the same ground, and their cases consolidated with the principal case.

If the Court should be of opinion that the Revising Barrister was wrong, the names so expunged were to be restored to the list.

Kingdon, Q.C., for the appellant. The appellant is entitled, under 30 & 31 *Vict.* c. 102, s. 3, to be registered as the occupier of a "dwelling-house." As to

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this *Stamper* v. *The Overseers of Sunderland* (*a*) is in no respect an adverse authority. That case only decided, that although the apartments there would have been separately rateable under the 42 *Eliz.* c. 2, yet inasmuch as by the operation of the "Small Tenement Act" they were not separately rated when the 30 & 31 *Vict.* c. 102, passed, they fell within the exception in its 7th section. The present case is altogether clear of that difficulty. The appellant is separately rated, and no question as to rating is raised. The sole question for determination here is, whether the part of a dwelling-house occupied by the appellant is "occupied as a separate dwelling" within the interpretation clause, sect. 61 of the 30 & 31 *Vict.* c. 102. For that purpose it is material to consider the distinction between the Act of 1832 and that of 1867. Under the former Act the franchise was given to the occupier of a "house." But that Act, giving no definition of the word "house," the question was constantly arising whether some particular class of dwelling did or did not constitute a "house" within its meaning. And the sum of the decisions was, that either by vertical or by horizontal separation, the subject-matter of qualification must be substantially a house. That no doubt must be taken, subject to this observation, that a house may be so severed as to constitute two houses. Thus, in *Kitchin on Courts*, p. 99, it is said, "If the inheritor of a house let a certain part in which he dwells, and severeth it from the other part, and maketh several doors to the high street, it is now as two houses; otherwise it is if they have but one door to the high street." But that passage does not at all clash with the remark, that under the old

(*a*) *L. R.* 3 *C. P.* 388.

law the word "house" meant a whole house, and was not satisfied by part of one—a circumstance which lies at the foundation of the change of language in the Act of 1867, and shows that, in defining a "dwelling-house" to include "part of a house," the change of language was advisedly made. If indeed no change in that respect were intended, why, it may be asked, in the Act of 1867, is the word "dwelling-house" defined at all; and, if defined, why is not structural severance, in accordance with *Cook* v. *Humber* (*a*), made in clear terms the basis of the definition? That the change in the language used points to a change of intention seems in itself the more reasonable hypothesis, and is certainly more respectful to the Legislature—a consideration entitled to the more weight from the difficulties which had been found to beset the old law, which could not but have been in the mind of the Legislature when the Act of 1867 was framed. The words of sect. 61, defining "dwelling-house" as "*part of a house* occupied as a separate" "dwelling," not "dwelling-house," are, it is submitted, fully satisfied here. The rooms are all under one roof, and the appellant occupies them exclusively, the sitting-room for living, the bed-room for sleeping purposes. If joined together they would undoubtedly constitute a complete dwelling; what difference can it make that the right of way from one to the other is by a staircase common to the other occupiers.

[BRETT, J. How do you distinguish the appellant's case from that of a lodger?]

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B. N. S.* 33.

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First, there is no landlord on the premises to exercise general control. Secondly, the appellant is both rateable and rated, which a lodger is not.

The remarks of Lord *Coke*, under the head *Burglary*, show that the appellant has a *domus mansionalis* in law (3 Inst. 64, 65). Lord *Coke* says, "that a chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is *domus mansionalis* in law. That passage must, no doubt, be qualified to this extent, that a mere lodger would not have a *domus mansionalis*.

[BRETT, J. That passage has reference to the law of burglary; and in *Cook* v. *Humber* (*a*), *Erle*, C.J., expressly said that the law relating to burglary was for the protection of human abodes during the hours of sleep, and that a distinction was made for that purpose which had no analogy to qualification.]

As regards the conveniences enjoyed in common, they are merely accessorial to the appellant's occupation of his dwelling, and cannot affect his qualification. In *Score* v. *Huggett* (*b*), there was a common user of the back kitchen and yard, but *Tindal*, C.J., said that the claimant had a distinct and separate occupation.

[BRETT, J. That case is commented on in *Cook* v. *Humber* (*a*), and *Erle*, C.J., said, that if the true question arising on the facts had been referred to the Court, it would have turned entirely on the sufficiency of the tenement.]

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B. N. S.* 33.

(*b*) 1 *Lutw.* 199; *S. C.*, 7 *M. & G.* 95.

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Lopez, Q.C., for the respondent. On behalf of the appellant, it seems admitted that he has not a "house" within sect. 27 of the 2 *Will.* 4, c. 45, as construed by the decisions, *Cook* v. *Humber* (*a*), *Henrette* v. *Booth* (*b*), *Cuthbertson* v. *Butterworth* (*c*). It is argued, however, that he has a "dwelling-house" within sect. 3 of the 30 & 31 *Vict.* c. 102, the word "dwelling-house" being construed by reference to the interpretation clause, sect. 61. It is submitted that this argument is equally without foundation. The Court has asked, in the course of the argument, what meaning is to be ascribed to the words "dwelling-house" and "separate dwelling" in sect. 61, and the case of *Brewer* v. *M'Gowen* (*d*) supplies a definition. There *Willes*, J. (after reading the definition of "dwelling-house in sect. 61), said, "that definition would be satisfied by a part of a dwelling-house, with all internal communication cut off, with access secured by a separate outer door, and separately rated."

[BOVILL, C.J. The learned judge only speaks of the definition in sect. 61, being "satisfied" by the case he suggests. Moreover, the observation was not necessary to the decision of the case before him.]

It is submitted, that what was there said furnishes a complete definition, whether or not so meant by *Willes*, J., or only as a case satisfying the definition.

(*a*) *K. & G.* 413; *S. C.*, 11 *C. B. N. S.* 33.

(*b*) *Hopw. & Ph.* 23; *S. C.*, 15 *C. B. N. S.* 500.

(*c*) *Ante*, p. 183; *S. C.*, *L. R.* 4 *C. P.* 523.

(*d*) *Ante*, p. 285; *S. C.*, *L. R.* 5 *C. P.* 239.

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The words of the interpretation clause are not "part of a house occupied *separately*," as the other side would read them, but "occupied as a *separate dwelling*"—the dwelling being the thing expressly pointed out as that which is to be separate. Moreover, if the appellant's construction be correct, the lodger clauses are entirely nugatory, since a lodger is not qualified under sect. 4, unless he has occupied "separately and as sole tenant." As regards the question of outer door, the outer door here must be the general outer door of the occupation. If not, the appellant has two outer doors, and on different floors.

[KEATING, J. Suppose the rooms to be all on one floor, but with more doors than one on to the common staircase?]

It is submitted there would be no vote in such a case, but to contend for that here is not necessary to the respondent's argument.

Cur. ad vult.

BRETT, J. *Thompson* v. *Ward.* In this case, *George Herbert* appeared on the list of claimants for the city of *Durham*, as claiming in respect of "a house." The case found that the claimant had for above a year occupied as tenant at £4 10*s.* per annum, not a house, but one room in a house. The house, it was stated, consists of nine rooms, and is let out in six several tenements. Of these, three tenants occupy two rooms each, and each of the other three tenants occupies one room. The house was originally built for one family. The passage, and the staircase, and the conveniences,

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consisting of a privy and ash-pit, which latter are situated in a yard opposite, are common to all the tenants. Each of the tenants has a separate coal-house in the yard. There is an outer or street door to the passage (*i.e.*, as I understand, to the passage of the house), which is never closed, and is without lock or bolt, although it retains two staples through which a bolt formerly was and still might be shot. Each tenant has the exclusive occupation of his or her room or rooms. The owner does not reside on the premises.

The claim was objected to on the ground that the claimant was not an occupier of a "dwelling-house," within the meaning of the statute 30 & 31 *Vict.* c. 102. The Revising Barrister was of opinion that "the premises occupied by the claimant" (he does not, it is to be observed, speak of "the room" only), were not a "dwelling-house" within the meaning of the Act, and disallowed the claim.

The question for the opinion of the Court was left in these terms: "If the Court shall be of opinion that the premises occupied by the claimant were a dwelling-house within the meaning of the Act, his name is to be inserted in the list of voters."

It was argued on behalf of the appellant that the claimants, according to the case of *Henrette* v. *Booth* (*a*), would have been entitled to be registered under the old Act (*b*), if the premises occupied by him had been of sufficient value, and was, therefore, entitled under the new Act; or, if he would not have been entitled under the old Act, that the new Act was intended to alter the

(*a*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

(*b*) 2 *Will.* 4, c. 45.

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old Act as interpreted in *Cook* v. *Humber* (*a*); that within the meaning of the new Act, every occupier must be either an occupying tenant or a lodger; that the claimant was not a lodger, because the landlord did not occupy any part of the house, and was, therefore, an occupying and resident tenant; that the claimant's case comes within the very words of sect. 61 of the new Act, because his room, which is the tenement occupied by him, is part of a house; he alone occupies the room, he therefore occupies it separately, it is therefore occupied as a separate dwelling.

It was argued for the respondent that the premises occupied by the claimant, even if of sufficient value, would not have given a qualification under the old Act; that the new Act does not, as to the point in dispute, alter the old Act; that the claimant may be considered as a lodger, although the landlord does not occupy any part of the premises, or because the landlord in this case does occupy the passage and staircase; that the question is not whether the claimant is a lodger, but whether he occupies a dwelling-house within the meaning of sects. 3 and 61 of the statute; that it is not sufficient to show that the claimant occupies separately, for a lodger usually occupies separately, in the sense in which the phrase was used in argument; that the tenement occupied by the claimant was part of a house, but not occupied as a separate dwelling, because, in order to use or enjoy as a dwelling-house that part of the house which is said to be his separate dwelling, he necessarily used another part of the house in common with other persons.

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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I am of opinion that the case of *Henrette* v. *Booth* (*a*), in which the circumstances were very peculiar, and which, I venture to think, trenched somewhat too closely on the so much considered case of *Cook* v. *Humber* (*b*), does not oblige us to hold that the tenement occupied by the claimant was not a house within the meaning of the old Act. It seems to me to be entirely inconsistent with the findings in this case to say that the tenement occupied by the claimant is a house within the meaning of the old Act. It therefore seems to me that the case, as stated and argued, raises the question, what is the true legal interpretation of sects. 3 and 61 of the "Representation of the People Act, 1867."

Now, in the first place, in order to arrive at what is the exact point to be decided, I think it better to point out what cannot in my opinion be taken into consideration. Under the old Act two separate buildings could not be joined together to make up the value required, *Dewhurst* v. *Fielden* (*c*); *Powell* v. *Price* (*d*). Such separate buildings as the conveniences described in this case could not have been joined to the tenement, *i.e.*, the room, or the room, passage, and staircase, to make up the value, although the fact of the use of the room, &c., being more valuable by reason of the right to use the conveniences, might have been taken into account as adding to the value of the room, etc. But the thing to be considered as the subject-matter of the occupation would have been, according to the decisions, the room alone, or the room, passage, and staircase under the same roof. So, as it seems to me, a joint occupation of such separated and external buildings as the con-

(*a*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

(*b*) *K. & G.* 413; 11 *C. B. N. S.* 33.

(*c*) 1 *Lutw.* 274; 7 *M. & G.* 182.

(*d*) 1 *Lutw.* 586; 4 *C. B.* 105.

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veniences in this case can have no effect upon the question whether the tenement, *i.e.*, the room, &c., occupied by the claimant is so separately occupied by him as to be a dwelling-house or not within the meaning of the 61st section. Secondly, it does not seem to me to be necessary to determine whether the claimant is or is not a lodger. It may be that a claimant occupying a tenement does not occupy such a tenement as qualifies him to be placed on the register as an inhabitant householder, though he may not be a lodger. Thirdly, it does not seem to me necessary to consider the cases of tenements which have been structurally separated from the house of which they were once a part, or of tenements which, as originally constructed, never were part of a house. Such tenements were held to be houses within the meaning of the old Act, and are doubtless also houses within the meaning of the 3rd section of the present Act, without reference to the interpretation clause. The cases of chambers in the *Inns of Court*, and probably of the flats in *Victoria Street*—though, with regard to these latter, which have been so often quoted as if the circumstances relating to them had been the subject of judicial decision, I should prefer to reserve my opinion until the facts are ascertained—are, I apprehend, within the latter proposition, that is to say, they are tenements which, as originally constructed, were not parts of a house.

The question as put forward in the present case is in respect of a room, which is stated in the case to be a room in a house, which house was originally constructed as one house, which house is still structurally the same house as it always was, and from which the room in question has never been more structurally separated than it was in the beginning. The question, therefore,

and the only question, is, whether that room is a "dwelling-house" within the meaning of the new statute.

Now, sect. 27 of the Reform Act of 1832 was, after many apparently fluctuating decisions, though they have been explained to be really consistent, finally interpreted in the ruling case of *Cook* v. *Humber* (*a*), and in that case it was pointed out that, under a section so framed, the qualification is formed of elements—in that case of four elements, tenement, value, occupation, and estate. "There must be for tenement," it is said, "a house, warehouse, &c.; there must be for value annually 10*l.*; there must be occupation, that is, actual exercise of the rights of the owner of a house in possession during the requisite time; there must be an estate in the tenant either in fee or lease. If these four distinct elements are combined in the claimant, he is qualified, but otherwise he is not. Now, although it is said they must exist in combination in order to qualify, still, in inquiring into the existence of the combination, each element must be separately ascertained. First, is the claimant a tenant? Secondly, is he an occupier? Thirdly, is the tenement sufficient, in value? Fourthly, in kind? The 3rd section of the "Representation of the People Act, 1867," so closely follows the form and structure of the "Reform Act, 1832," and deals so entirely with a similar subject, that it seems to me impossible to deny that the qualification under it is compounded of elements which must be combined in the claimant in order to qualify him, and that in considering whether he is, or is not, qualified by such combination each element must be separately ascertained. The elements of qualification

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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under the 3rd section are estate, occupation, and tenement. The element of value is discarded. There must be an estate in the tenant, that is to say, a holding as owner or tenant. There must be occupation. And as to this element it seems to be useful to observe carefully how it is dealt with in the statute. It seems to me that it is completely dealt with in the 3rd section. According to that section, without referring to the interpretation clause, there must be an actual exercise of the right of inhabitancy in, and of ownership of, the house for the requisite time, and such actual exercise of right must, by the proviso, be the separate exercise of it, and must not be the joint exercise of it with another. The question of joint or separate occupation is completely disposed of in the section whilst dealing with the element of occupation.

The remaining element, the nature of which must be separately ascertained, is the tenement or thing occupied. That is described in the section as "a dwelling-house." If there had been no other description of it in the statute, I apprehend the Court, in accordance with *Cook* v. *Humber*, must have held that it must be as much structurally a separate house as the "house" described in sect. 27 of the former Act. I say so because the two statutes deal with a similar subject-matter, and there is an express enactment that they are to be read together as one (*a*). But then comes the 61st section, which enacts that "the following terms shall in this Act have the meaning hereinafter assigned to them," etc., that is to say, "dwelling-house shall include any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor."

(*a*) In sect. 59.

Before attempting to interpret this clause, some things should be observed in it. It may be said to be applicable not only to sect. 3, but to several other sections. I incline, however, to think that whatever may be its interpretation, it can only be applied to sect. 3. But, as applied to sect. 3, I think it is most material to observe that it is a definition of the tenement—that is, the thing to be occupied; of that element, and not of the element which is called occupation—that is, the mode or manner of occupying the thing occupied.

Subject to these observations, there arises the real, and, to me, most difficult question—What is the proper interpretation of this clause? I must repeat that to me this clause, which assumes to deal with the question of what the tenement occupied is to be, and to define that element alone of qualification, is a most difficult and obscure enactment. It has been suggested that it means that the thing occupied may be part of a house, provided the occupier be not a joint-occupier with some one else. If so, the words "occupied as a separate dwelling" are futile; because, by reason of the proviso in sect. 3, the same result exactly would have been arrived at if the only words in sect. 61 had been, "dwelling-house shall include any part of a house." This alone, as it seems to me, makes it contrary to a well-known and firmly-established canon of construction to give to the section the suggested interpretation. But, further, if that interpretation were adopted, it seems to me that sect. 3, read in that sense, and applied as is suggested in this case, would describe exactly the position of a lodger. He may, in that sense, equally with the present claimant, be said to occupy as tenant separately—that is to say, not jointly with another—part of a house! That being

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so, a lodger might be registered under sect. 3, without reference to the element of value required by sect. 4. Such a reading seems to me to make sect. 3 inconsistent with the existence of sect. 4. From these considerations, I arrive at the conclusion that the suggested interpretation ought not to be accepted.

Another interpretation which was suggested on behalf of the respondents was, that the part of a house described in sect. 61 must be structurally separated from the rest of the house. This interpretation is open to the objection that it gives no real effect to the 61st section, because the same interpretation would, without it, by reason of *Cook* v. *Humber* (*a*), have been placed upon sect. 3 itself. This objection is, I think, a valid one, and the clause cannot be so interpreted. The 61st section does, in my opinion, get rid of the necessity of a *structural separation*. It follows that the correct interpretation is between these two extremes. Considering always that the 61st section is dealing with the thing occupied, and not with the mode of occupying it, I think that the word "occupied" in this section has its proper meaning of "used," and is not dealing with the technical and legal idea of "occupation:" the clause should be read thus—"Dwelling-house shall include any part of a house *used* as a separate dwelling."

The interpretation to which I feel forced to arrive is, that although there need not be a structural separation, there must be a practical separation of *the thing occupied* from the rest of the house. The true construction seems to me to be, that the part of the house occupied by the inhabitant of it who claims to be registered, should be

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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so situated in the house of which it is a part, and should be in such a condition as to be capable of being *used*, and should be in fact *used*, as houses wholly separated from other houses are *used* by their inhabitants. If, in order to use or in the using of the part of the house in respect of which he claims, the claimant has stipulated for, or has accepted, the right of using, or does in fact use, some other part of the house as a part of a house, then, besides using exclusively or separately the part of the house to which he confines his claim, he uses another part jointly with others; and the part of the house for which he claims is not the part of the house which he really uses. It is only a part of that part. The part which he really uses is composed of the part to which he improperly confines his claim, and the part jointly used by him and others. The part of the house which he really uses is a part not used as a separate dwelling, because a part of it is used by him jointly with others. Under such circumstances, the case in my opinion is not within either the 3rd or the 61st section. I have said, improperly confines his claim, because I feel certain that, if the construction of the statute at which I have arrived be correct, a claimant cannot properly be allowed to evade the consequences of that interpretation, by claiming in respect of a part only of that which he really uses. If a claimant could reject all the use he makes of a house except the use of the one room he is allowed or has a right to occupy exclusively, and could claim in respect of the exclusive use of that room, every inmate of a house except a servant must be taken to be the inhabitant occupier of a house within a house, though the owner of the whole house is resident in and has control over all the house but the

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one room. If a claimant can do this, the description of the qualification in sect. 3 becomes an idle and inapplicable phrase. The present claimant, in my opinion, fails, because the part of the house which he really uses is composed of the room to which he has improperly confined his claim, and the passage and staircase which he uses in common with the other occupiers, and which passage and staircase are by the express findings in this case not parts of a street or way, but parts of the house of which the room is a part.

I think it is not unworthy of notice that the interpretation of the statute thus arrived at makes the definition of a house and of a householder under the statute consistent with the definition at common law of a house and a householder enunciated for the purpose of the franchise by the committee in the *Cirencester case* (*a*), quoted by *Mr. Giffard* in *Cross* v. *Alsop* (*b*). "Neither can a person whose habitation is composed of more apartments than one be deemed to be a householder, unless he also possesses an exclusive right to the use of the staircase, doorway, or other passage that forms the means of communication between his several apartments. The original right to an exclusive use is then the point of discrimination between the *householder* on the one hand, and the *inmate* on the other."

I am of opinion that the decision of the Revising Barrister was right, and ought to be affirmed.

Ellis v. *Burch.* It follows, of course, that I arrive at the same conclusion in the *Exeter case*, which is, I think, even a stronger one. The appellant there claimed to be

(*a*) 2 *Fraser*, 449.

(*b*) *Ante*, p. 454. As no decision was given on the point referred to, that branch of the argument in *Cross* v. *Alsop* was not reported.

registered as the occupier of two rooms in a seven-roomed house, for which he paid an annual rent of £6 10*s.*, the other five rooms being let to one *Chambers* at £9 11*s.* 9*d.* per annum; the owner paying all rates and taxes, but not residing upon the premises. The facts found by the Revising Barrister are as follows:—[The learned Judge read the second, third, and fourth paragraphs of the case.] The decision was, that the two rooms so occupied by the appellant did not constitute a "dwelling-house" within the meaning of the 'Representation of the People Act, 1867;" and the question reserved for us is, not whether one of the rooms thus occupied constituted a dwelling-house within the statute, but whether such occupation of the two rooms was the occupation of a "dwelling-house" within the statute. For the reasons I have already given in *Thompson* v. *Ward*, I think it was not, and I therefore come to the conclusion that the decision of the Revising Barrister in each case was right, and should be affirmed.

KEATING, J. In these cases, the appellants claimed to vote, under the provisions of sect. 3 of the "Representation of the People Act, 1867" (30 & 31 *Vict.* c. 102, as inhabitant occupiers of "dwelling-houses" within the terms of that Act. The facts were, that they resided in parts of houses—the one in two rooms, the other in one room. In each case the residence was exclusive as to the rooms, though not as to the use of the passages or all the out-door conveniences; and there was complete control over the use of the outer door or entrance to the houses. In neither case did the owner reside upon the premises; and in each case there was a separate rating of the claimant in

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respect of the part of the house occupied by him. The only question in each case was, whether the rooms so occupied were "dwelling-houses" within the meaning of the Act referred to.

Before the passing of the Representation of the People Act of 1867, the borough franchise in respect of the occupation of houses was regulated by the Reform Act of 1832, (2 *Will.* 4, c. 45, s. 27,) which confined it to the occupation of "any house" of the value of £10 per annum. Residence in the house was not necessary; it was sufficient if the residence were within seven miles of the borough in which the house was situated.

Under this statute questions frequently arose as to what constituted "a house" within the meaning of the section; and it was decided early that the subject of the qualification need not be a house in the proper acceptation of the term, but that rooms in a house, if, as it was termed, "structurally severed" from the rest, might constitute "a house" so as to satisfy the statute: but the difficulty remained as to what amounted to such a "structural severance" as would be sufficient. In *Cook* v. *Humber* (*a*), an attempt was made by this Court to lay down certain rules by which it was hoped the difficulty might be overcome: but I think the subsequent case of *Henrette* v. *Booth* (*b*) renders it at least doubtful how far that hope was realized. The truth seems to be that the question of "structural severance" was, and continued to be, one of very difficult solution, depending upon the circumstances of each case; the cases oftentimes running very closely together,

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

(*b*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

—of which the two cases referred to furnish a complete illustration.

In this state of things, which must be assumed to have been within the knowledge of the Legislature, they were pleased to create a new franchise, and to enact that an inhabitant occupier as owner or tenant of any "dwelling-house," without reference to value, might vote; and, as if to get rid of the difficulty of what should amount to "structural severance," the Act provides that "*any* part" of a house occupied as a separate dwelling, and separately rated to the relief of the poor, should constitute a "dwelling-house" within the meaning of the Act.

Now, it appears to me that the claimants here satisfy in terms the requirements of the Act. Each occupies a part of a house as a separate dwelling, and is separately rated in respect of such occupation. But it was argued on behalf of the respondents that the claimants could not be said to occupy the rooms "as a separate dwelling," unless the dwelling constituted "a house" within the meaning of the former Act of 2 *Will.* 4, c. 45, s. 27: in other words, that the later Act made no change whatever in the nature of the subject-matter of occupation for the purposes of the franchise, but only in its nature; and that, when the Legislature said in the one Act "a house," and in the other "any part of a house," they in effect meant one and the same thing.

Whether there was in the present case such a "structural severance" as would constitute "a house" under the former Act, I do not inquire; because I am quite unable to accept the interpretation contended for. Indeed, the only foundation for it that I am aware of is the occurrence, in the 61st section, of the words

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to state in writing "the facts which, according to his judgment, shall have been established by the evidence in the case, and which shall be material to the matter in question." It was for him to decide whether in point of fact the house described in each of these cases is so divided, whether vertically or horizontally, as that the room occupied by the claimant in the city of *Durham* in the one case, or the two rooms occupied by the claimant in the city of *Exeter* in the other case, may constitute a separate dwelling-house. In each case he has found that the room or rooms so occupied are not separate dwelling-houses. The claimant has no outer door of his own. In each case it is found that there is an outer or street door, though in one case negligently kept, and that the rooms are rooms in an ordinary house occupied by persons who to my mind, and according to the decision of this Court in *Cook* v. *Humber* (*a*), are persons who, for want of control over a separate outer door, are to be dealt with as lodgers, and not as occupiers of separate dwelling-houses. We are called upon to find that the room or rooms as described constitute separate dwelling-houses, which, according to the ordinary interpretation of the English language, is to find the thing that is not; we are called upon to find that to be a dwelling-house which the Revising Barrister has found not to be a dwelling-house. If the matter came before me as one of fact, it is possible, though not likely, that I might arrive at a different conclusion; but to arrive at such a conclusion as matter of law only, would be expanding the facts by a construction of law which at least is doubtful:

(*a*) *K. & G.* 413 ; 11 *C. B. N. S.* 33.

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and I decline to do so. Ordinarily, at common law, and according to the common understanding of mankind, rooms in a house, the occupier of which rooms has no control over a separate outer door, do not constitute "a house." They are not "houses" within the "Reform Act;" neither are they "dwelling-houses" within the "Representation of the People Act, 1867."

The Act which indicates what ought to be the conclusion come to in this case is the Reform Act, 2 *Will.* 4, c. 45. It is a mistake to suppose that the "Representation of the People Act, 1867," repeals or was intended to be a substitution for the Reform Act, except in so far as it extends the franchise, by enabling a person who in respect of the occupation of a dwelling-house would be entitled to a vote under the Reform Act, provided the subject of occupation was of the annual value of £10, to acquire a vote even though it be not of that value, subject to certain conditions. The 27th section of the Reform Act gives the right of voting to one who occupies as owner or tenant "any house, warehouse, counting-house, shop, or other building," which of course includes a dwelling-house, though not necessarily so confined. That is the main provision in the Act of *Will.* 4. Then comes the provision as to joint occupation, which I agree with my brother *Keating* is of the highest importance when looking at the "Representation of the People Act, 1867." That is sect. 29, which enacted that, where premises shall be jointly occupied by more persons than one as owners or tenants, each of such joint-occupiers shall, subject to certain conditions, be entitled to vote in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount which, when divided by the number of such

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occupiers, shall give a sum of not less than £10 for each and every such occupier. We have, therefore, under that Act, a general provision including a special provision as to voting in respect of a house of the yearly value of £10. There is another matter which it is important to look at when we come to construe the Act of 1867. It is that, though, upon the true construction of sect. 27 of the "Reform Act," part of a building might constitute a house, if structurally separated from the rest, this Court has held that no lodger, whether the landlord himself occupied any part of the premises or not, or whether the lodger had a key of the outer door or not, could acquire the franchise under the Reform Act. We start therefore with this, that joint-occupiers, but not lodgers, had a right to vote under that Act.

I cannot take the view adopted by my brother *Keating*, and, I believe, by my Lord also, as to lodgers. I cannot help thinking that the position of a lodger has been well defined. It was so in the masterly judgment of *Erle*, C.J., in *Cook* v. *Humber* (*a*), every word of which is applicable here. I entirely adopt it; and I think the subsequent case of *Henrette* v. *Booth* (*b*) is not at all inconsistent with it. I conceive it to be a judgment as conclusive as anything can be which is not demonstrated by mathematical reasoning. In *Cook* v. *Humber* (*a*), the appellant occupied rooms in a house which are thus described:—"The rooms on the ground floor have doors into the house-passage or hall, which is shut off from the street by an outer door, kept closed during night and day. The rooms on the upper floor rented by him are approached by a staircase used exclusively by him,

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

(*b*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

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and there is no communication between such rooms and the rooms on the other side of the passage. The rest of the house is occupied by the landlord, who resides therein with his family. The appellant has a lock and key to each of his rooms, and both he and his landlord have keys of the street-door; and they are rated jointly." The question was whether the person who occupied that large portion of the house was a tenant within the meaning of the Reform Act. It was held that he was not, because there was no structural severance of the part so occupied by him from the rest of the house. All the previous decisions were there cited. The Chief Justice says:—"We consider that the qualification fails, because the subject of occupation was not a house, but only a part of a house, without any actual severance from the residue." He then goes on to define the elements of a qualification for a borough vote; and he says: "As to the kind of tenement which qualifies, the statute has described two classes of buildings, *viz.*, those used for residential and those used for commercial purposes—house, for residence—warehouse, counting-house, shop, or other analogous building, for commerce. When the claim is in respect of a house, we consider that the Legislature did not intend to create a part of a house used for residence, and not for commerce, a tenement sufficient to qualify. A part of a house cannot truly be said to be a house, unless the word 'house' is used in two senses. In *Judson* v. *Luckett* (*a*), a part of a house in one sense was in another sense a whole house, by reason of actual severance." Then, after disposing of the argument that the appellant might have been considered to be in the

(*a*) 1 *Lutw.* 490; 2 *C. B.* 98.

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occupation of an "other building," and observing that it had always been held that a lodger was not qualified as a householder, he refers to *Fludier* v. *Lombe* (*a*), where the objection to the plaintiff's vote was, that he had let part of his house in lodgings, and so was not the sole occupier; but Lord *Hardwicke* ruled to the contrary, and said—"A lodger was never considered by any one as the occupier of a house: it is not the common understanding of the word; neither the house nor any part of it can be properly said to be in the tenure and occupation of the lodger." I might here add a reference to *Brewer* v. *M'Gowen* (*b*), in which the same doctrine was laid down in this Court since the passing of the "Representation of the People Act," and with reference to its construction. The Chief Justice then goes on: "Since the Reform Act, the same opinion is conveyed in the decisions holding that occupation as a lodger did not qualify. The common meaning of 'lodgings' is a part of a house used for residence. If the Legislature had intended to make lodgers qualified, we think it would not have been left to obscure conjecture from the words 'other building.'" Every word of that is worth considering, because the Chief Justice is there speaking of part of a house occupied as a separate dwelling, which is the language used in sect. 61 of the "Representation of the People Act, 1867," and I entirely agree that it should not be left to obscure conjecture who is to vote in the election of members of Parliament. His Lordship then refers to *Wright* v. *Town Clerk of Stockport* (*c*), where the occupation of a separate room in a cotton-spinning factory

(*a*) *Cas. t. Hard.* 307.
(*b*) *Ante*, p. 275; *L. R.* 5 *C. P.* 239.
(*c*) 1 *Lutw.* 32; 5 *M. & G.* 33.

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was held to qualify, because each separate room was, by reason of actual severance, with a separate outer door, an entire building in one sense, though part of the entire building (the factory) in another sense, and adds: "Assuming this to be the correct construction of the statute, the question here is brought to the point whether the rooms occupied by the appellant are a 'house.' We think that they were correctly decided by the Revising Barrister not to be a house within the meaning of the statute, because they formed part of a house when they were let, and there was no actual severance of the appellant's part from the other part." Considering the great care which was taken in framing the Act of 1867, I cannot help thinking that that passage was in the minds of its framers when they introduced into sect. 61 the interpretation of "dwelling-house." And, though I agree in the main with the judgment of my brother *Brett*, I do not see my way to the conclusion that there need not be actual structural severance, but that any practical division will suffice. I do not see how it was possible to select words which, having regard to the former Act, and to the construction which had been put upon it, could be a clearer indication of an intention to go no further as to "dwelling-house," than the Legislature had previously gone as to "house." The Chief Justice goes on: "No authority earlier than *Score* v. *Huggett* (*a*), and *Toms* v. *Luckett* (*b*), was cited to show that a part of a house may become a 'house,' without any actual severance, by reason of some conventional arrangement in respect of the keys of the outer door, or the pernoctation of the landlord: and the authorities are uniform to show that, by actual

(*a*) 1 *Lutw.* 198; 7 *M. & G.* 95. (*b*) 2 *Lutw.* 19; 5 *C. B.* 23.

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severance, a part of a house became changed into a house, and without such severance the change would not be effected." The whole reasoning of that judgment completely dispels all doubt, and shows that the character of the subject of occupation cannot be changed by reason of the circumstance of the landlord residing or not residing upon the premises, or by the fact of the occupier of the rooms having or not having a key of the outer door. He then refers to *Monks* v. *Dykes* (*a*), where *Parke*, B., speaking of the doctrine of Lord *Coke*, that a chamber may be "domus mansionalis" in law (*b*), says that "it refers to a house divided into several chambers, with separate outer doors, and that neither in law nor in common sense can a man be said to be in possession of a dwelling-house when he is a mere lodger." And referring to the rule as to burglary, which he says has no analogy with qualification, the Chief Justice concludes: "The general rule is that a part of a house, in the common understanding of the word, does not become a house in law, unless there be actual severance. In *Leach's Crown Cases*, 90, in the notes to *Rogers' Case*, Lord *Holt's* opinion is reported thus:—'If inmates have several rooms in a house, of which rooms they keep the keys, and inhabit them severally, yet, if they enter into the house at one outer door with the owner, those rooms cannot be said to be the dwelling-houses of the inmates; but the indictment ought to be for breaking the house of the owner.' If the owner does not reside on the premises, the crime of feloniously breaking into the sleeping abode of a lodger in the night is precisely the same as it

(*a*) 4 *M. & W.* 569; 8 *L. J. Exch.* 73.
(*b*) 3 *Inst.* 65, 66.

would be if the landlord slept there: and, in that case, it is held that the abode of the lodger may be called his '*domus mansionalis*.' This exceptional rule, depending on the reasons above assigned, is no ground whatever for holding lodgings to be a 'house' within the meaning of a statute requiring the claimant of a vote to be the occupier of a house; and yet these exceptional cases were pressed on the Court in *Toms* v. *Luckett* (*a*), as authorities for holding that lodgings became a 'house' if the owner did not sleep on the premises."

The case of *Cook* v. *Humber* (*b*) appears to me to dispose of all the arguments arising out of the landlord not residing or sleeping on the premises, and of the tenant's having or not having control over the outer door of the house, and shows that, under the Reform Act, and upon the finding of the Revising Barrister in this case, the rooms in question did not constitute a "house" within the meaning of that Act. It appears to me to have laid down a clear and intelligible rule. It is said, however, that doubts have been thrown upon that decision by the subsequent case of *Henrette* v. *Booth* (*c*). But the Court in that case professed to adhere to their former decision; and the principle which that case adheres to shows that these rooms do not constitute a house within the Reform Act. The claimant there occupied the upper floor of a house, consisting of two rooms communicating with each other, one being used as a tailor's shop, and the other as a sitting and bed-room, and communicating with the landing on the staircase by one *outer door, over which*

(*a*) 2 *Lutw.* 19; 5 *C. B.* 23.
(*b*) *K. & G.* 413; 11 *C. B. N. S.* 33.
(*c*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

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the tenant had exclusive control. In neither of the cases now before us is there any such finding; the claimants had no outer door other than that which was common to all the inmates. In *Henvette* v. *Booth* (*a*) it was a question of fact for the Revising Barrister whether, looking at the nature and character of the premises, the door upon the landing was really an outer door. He came to the conclusion that in point of fact it was so. The judgment of *Erle*, C.J., lays down precisely the same principle which he had laid down in *Cook* v. *Humber* (*b*); but he comes to the conclusion that, as the claimant had exclusive occupation of his rooms, and exclusive control over the outer door thereof, he was entitled to be registered. My brother *Keating* says: "Looking at the facts found by the Revising Barrister, I have come to the conclusion, *though not without difficulty*, that the appellant was the occupier of a 'house' within the meaning of the 27th section of the Reform Act. The only door which the Revising Barrister speaks of as an outer door, is the door leading from the rooms in the appellant's occupation, and over which he had exclusive control. Practically, there was no other outer door. There is, it is true, at the bottom of the staircase a thing which is in some sense a door, but which wants all the essential elements of an outer door, 'having no lock or fastening of any kind, nor any means of being so closed as to secure the premises from intrusion from the street.' It is as though the outer door were taken off its hinges and left lying at the side of the doorposts. I think the Revising Barrister very properly abstained from calling that the outer door."

(*a*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

(*b*) *K. & G.* 413; 11 *C. B. N. S.* 33.

If the Revising Barrister there had found the door at the bottom of the staircase to be the outer door of the premises, though neglected and out of repair, the learned judge would evidently have come to the opposite conclusion; and that opposite conclusion I feel bound to adopt in this case.

Thus, under the Reform Act, the occupier of a house of the annual value of £10 was entitled to vote. Joint occupiers also, provided the annual value of the house was enough to give each the annual value of £10, were entitled to vote. Lodgers had no vote; and part of a house might be a "house" within that Act, provided it was structurally severed from the rest of the building of which it formed part. Then came the "Representation of the People Act, 1867," 30 & 31 *Vict.* c. 102.

That Act did not repeal the former Act; but is to be construed with it. It enlarges the franchise in respect of dwelling-houses; but is not, therefore, to be so construed as to enlarge the species "dwelling-house" to such an extent that it could not fall within the original genus "house," without express words to convey such an intention. Sect. 3 deals with two of the points I have referred to. It gives, by sub-section 2, the franchise to the occupier, whether as owner or tenant, of any dwelling-house within the borough, irrespective of value; and requires, by sub-section 3, that he shall have been rated to the relief of the poor in respect of the premises so occupied by him. Then, sub-section 4 contains a proviso that no man shall, under this section, be entitled to be registered as a voter by reason of his being a joint occupier of any dwelling-house. A lodger does not fall within that section. This is obvious, not only

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from *Cook* v. *Humber* (*a*), but also from sect. 4, sub-section 2 of which gives the franchise to one who, "as a lodger, has occupied in the same borough, separately and as sole tenant, for the twelve months preceding the last day of July in any year, the same lodgings, such lodgings being part of one and the same dwelling-house, and of a clear yearly value, if let unfurnished, of £10 or upwards."

The next section to which reference may be made for the purpose of determining whether "lodger" under this and the former Act is to be differently construed, is sect. 7, sub-section 2 of which enacts that, "where the dwelling-house or tenement shall be *wholly* let out in apartments or lodgings not separately rated, the owner of such dwelling-house or tenement shall be rated in respect thereof to the poor-rate." I do not observe upon the *Sunderland Case* (*b*), though I collect from his judgment that one of the judges had this point in his mind, and that his opinion was the same as that which I entertain. The 7th section has no immediate bearing upon the decision in this case; but it may be usefully referred to for the purpose of showing what was the meaning of the Legislature. It dealt with a lodger where the owner did not dwell in the house in the sense contemplated by *Erle*, C.J., in *Cook* v. *Humber* (*a*), and so far adopted his view.

I now come to the section which is said to upset all the reasoning, and the conclusion arrived at under the previous sections of the Act, *viz.*, the interpretation clause, sect. 61. This section is one which I find it

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

(*b*) *Stamper* v. *Churchwardens, &c., of Sunderland*, *L. R.* 3 *C. P.* 388; 37 *L. J. M. C.* 137, *S. C.*

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very difficult to deal with. With great deference to the opinions of my Lord and my Brother *Keating*, I cannot think that the Legislature, by the interpretation they put upon the word "dwelling-house," meant to enlarge the franchise given by sect. 3 to such an extent that every man who occupies any portion of a dwelling-house—a single room or a cupboard, of which he is sole tenant—shall have a right to vote as the occupier of a "dwelling-house" within that section, although no such franchise existed before, either at common law or under the Reform Act. That does not appear to me to be the proper office of an interpretation clause. It would be to pervert the meaning of what had before been said in plain and unambiguous words. The language is: "Dwelling-house shall include any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor." Every one knows that a "dwelling-house" may include several separate dwelling-houses if structurally distinct. It is clear to my mind that by "separate dwelling" the Legislature meant a thing which is physically capable of being described as a dwelling-house—whether the separation be practical or structural. Taking *Cook* v. *Humber* (*a*) as my guide, I adopt the latter expression. It must be something more than a mere room in a dwelling-house. Take the case of a common dormitory, where the space to be occupied by each tenant is marked out on the floor; is each space to be called a "separate dwelling-house?" Or, suppose, instead of a common dormitory, each tenant had a separate sleeping apartment and the use of a common refectory; would they be the occupiers of

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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separate dwelling-houses within this Act? These are difficulties which the Legislature may probably think it right to remove. The conclusion I arrive at is, that the claimants in these two cases are mere lodgers, and would have votes only under sect. 4, provided their holdings were of the annual value of £10, and the other conditions of that section were satisfied. I think that the intention of the Legislature was that the separate dwelling referred to in sect. 61 must be something which could properly be called a "dwelling-house," and which is structurally, or at least practically, separated from the rest of the dwelling-house of which it forms a part,—such a dwelling-house as would have been a "house" within the Reform Act, and which answers the description of a house as interpreted by this Court in *Cook* v. *Humber* (*a*). I cannot conceive it to have been intended that a man should have a vote as the occupier of a "dwelling-house" under this Act which would not have been a "house" under the Reform Act.

In *Thompson* v. *Ward*, the claimant occupied one room of a house which had originally been built for one family. There were several tenants, all of whom used the passage, staircase, and other conveniences in common. There was an outer door to the passage, though from neglect it was never closed, and was without any available fastening, though it might have been fastened. In *Ellis* v. *Burch*, the claimant occupied two rooms under similar circumstances; the only difference between the two cases being, that, in the one, there was no fastening to the outer door, whereas, in the other, there was a bolt. In neither cases had the claimant exclusive control over

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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the outer door; nor was there in either any structural separation, as there was in *Henrette* v. *Booth* (*a*).

Notwithstanding that I feel fully impressed with the notion that these statutes for extending the franchise ought to receive a large and liberal construction to the extent of the fullest meaning that can fairly be attached to the words used, I am clearly of opinion that we should be going beyond the expressed intention of the Legislature if we held that the claimants in these cases are the occupiers of "dwelling-houses" or "separate dwellings," within the true meaning of the 3rd and 61st sections of the "Representation of the People Act, 1867."

For these reasons, I think the decision of the Revising Barristers should be affirmed (*b*).

BOVILL, C.J. *Thompson* v. *Ward.* I cannot consider that the question raised upon this appeal is at all concluded by the Revising Barrister having called a door to the passage which was never closed, and was without lock or bolt, "an outer or street door," or that the decision of the case depends upon the existence of such a door. The point submitted for our judgment is, whether the claimant's premises as described (including the description of the door), were a "dwelling-house" within the meaning of the "Representation of the People Act, 1867."

The 3rd section of that Act gives the franchise (subject to certain qualifications) to an inhabitant occupier as owner or tenant of any dwelling-house; and the

(*a*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

(*b*) *Reg.* v. *Millis*, 10 *Cl. & F.* 907; *Hickman* v. *Cox*, 3 *C. B. N. S.* 569, where the court of appeal is equally divided, an affirmance results.

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residue, and not "a house;" that the Legislature did not intend to create part of a house used for residence, and not for commerce, a tenement sufficient to qualify a voter; and that the claimant was, therefore, not entitled to the franchise as the occupier of "a house," within the meaning of that statute. The Court, in that case also, laid down (at p. 44 of the report) that a house might be divided by the structure into several flats, constituting several houses, although there was an outer door to the whole house, of which the tenants of the flats had not the key, and which was kept closed and under the sole control of a porter for the security of the tenants, and although the porter resided in one of the flats, and was the owner of all the others under the same roof.

That case was followed by *Wilson* v. *Roberts* (*a*), where it was also held that two rooms occupied by the appellant as offices, and being the whole of the first-floor, the landlord occupying the shop and residing with his family in the rest of the house, and each having a key of the street door; and the appellant's rooms not being structurally severed from the rest of the house, were a part of a house only, and not a house within the meaning of the Act.

In the year 1863, the Court had again to consider the question, in the case of *Henrette* v. *Booth* (*b*). In that case, the claimant occupied the whole of the upper floor of a house, consisting of two rooms communicating with each other, one being used as a tailor's shop, and the other as a sitting-room and bed-room, and communicating with the landing on the staircase by one

(*a*) *K. & G.* 430; 11 *C. B. N. S.* 50.

(*b*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

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outer door, over which the tenant had exclusive control. The other floors were occupied by other tenants. There was a common staircase; and at the entrance from the street was a door open all day, but generally allowed to swing to at night, but having no lock or fastening of any kind. The previous decisions were again carefully considered; and the Court, adhering to their decision in *Cook* v. *Humber* (*a*), came to the conclusion and decided that the claimant was the occupier of a house within the meaning of the statutes, the floor occupied by him being severed horizontally from the rest of the house as completely as in the case of chambers in the *Inns of Court*, where there was sometimes the additional circumstance of an outer door, and sometimes not; *Erle*, C.J., adding:—"The party has exclusive possession of the floor occupied by him, and exclusive control over the outer door of the floor:" and he repeated what had been previously stated, that the nature of the tenement could not depend on the presence or absence of the landlord, or the possession of a key of the outer door to the street. In that case, my brother *Keating* was also of opinion that the door to the street could not properly be considered an outer door: and I am of the same opinion as to the door in this case.

In these cases the Court found it extremely difficult to define in language what was "a house" within the meaning of the Act, or what was such an actual severance within the meaning of their own decisions as would constitute part of a house "a house" for the purpose of the franchise.

When the "Representation of the People Act, 1867," was passed, the term "dwelling-house" was introduced;

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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word "dwelling-house," it is declared by the interpretation clause, sect. 61, "shall include any part of a house used as a separate dwelling, and separately rated to the relief of the poor."

The Legislature not having given any more precise definition of what is to be deemed a dwelling-house, this Court is called upon to say what is the proper construction to be placed upon that term as used in the statute and upon the interpretation clause with reference to it.

In considering this question, and endeavouring to ascertain the meaning of the Act from the language in which it is framed, it is not unimportant to bear in mind what had been the decisions upon the Reform Act of 1832, and what was considered to be the state of the law at the time the Act of 1867 was passed.

In the Act of 1832, sect. 27, the words used with reference to the borough franchise were "every person who shall occupy as owner or tenant any *house*, warehouse, counting-house, shop, or other building," of a certain value, &c., and upon that enactment various questions arose as to the nature of the qualifying tenement, and also as to the character of the occupation; and there were numerous decisions upon these points, especially with reference to what was to be deemed "a house or other building," and what was an occupation "as tenant," which involved the consideration of what was an occupation by a mere lodger, as distinguished from a wholly independent tenant.

It would be very difficult to reconcile the whole of these decisions; nor is it very material for the present purpose to attempt to do so. They were all carefully

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considered by this Court in *Cook* v. *Humber* (*a*), and will be found collected in the report of that case, and in the result the Court came to the conclusion that *part* of a house could not be considered as coming within the words "other building," and that it could not be considered "a house," unless it was *structurally severed* from the rest of the building of which it formed a part. It was also considered that the question in most of these cases resolved itself into one as to the nature of the subject-matter of the occupation, rather than of the nature of the occupation of the tenement. It is also to be borne in mind that, in buildings used for commerce part of a house, such as a counting-house or warehouse, is by the express terms of the Act declared to be a qualifying tenement, although it was not so with regard to a house used for residence.

In *Cook* v. *Humber* (*a*), the claimant occupied as tenant one side of a house, consisting of rooms on a ground-floor, and rooms on the upper floor, with a separate staircase communicating between the rooms, and used exclusively by the tenant of those rooms; the entrance to the rooms being by doors to the rooms on the ground-floor from the house, passage, or hall, which was shut off from the street by an outer door kept closed during night and day; and the claimant had a key of the street door. There was no communication with the rooms on the other side of the house; and the landlord occupied and resided in the rest of the house, and had a key of the street door. It was decided that the rooms so occupied by the claimant were *part of a house only*, without any actual severance from the

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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residue, and not "a house;" that the Legislature did not intend to create part of a house used for residence, and not for commerce, a tenement sufficient to qualify a voter; and that the claimant was, therefore, not entitled to the franchise as the occupier of "a house," within the meaning of that statute. The Court, in that case also, laid down (at p. 44 of the report) that a house might be divided by the structure into several flats, constituting several houses, although there was an outer door to the whole house, of which the tenants of the flats had not the key, and which was kept closed and under the sole control of a porter for the security of the tenants, and although the porter resided in one of the flats, and was the owner of all the others under the same roof.

That case was followed by *Wilson* v. *Roberts* (*a*), where it was also held that two rooms occupied by the appellant as offices, and being the whole of the first-floor, the landlord occupying the shop and residing with his family in the rest of the house, and each having a key of the street door; and the appellant's rooms not being structurally severed from the rest of the house, were a part of a house only, and not a house within the meaning of the Act.

In the year 1863, the Court had again to consider the question, in the case of *Henrette* v. *Booth* (*b*). In that case, the claimant occupied the whole of the upper floor of a house, consisting of two rooms communicating with each other, one being used as a tailor's shop, and the other as a sitting-room and bed-room, and communicating with the landing on the staircase by one

(*a*) *K. & G.* 430; 11 *C. B. N. S.* 50.

(*b*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

outer door, over which the tenant had exclusive control. The other floors were occupied by other tenants. There was a common staircase; and at the entrance from the street was a door open all day, but generally allowed to swing to at night, but having no lock or fastening of any kind. The previous decisions were again carefully considered; and the Court, adhering to their decision in *Cook* v. *Humber* (*a*), came to the conclusion and decided that the claimant was the occupier of a house within the meaning of the statutes, the floor occupied by him being severed horizontally from the rest of the house as completely as in the case of chambers in the *Inns of Court*, where there was sometimes the additional circumstance of an outer door, and sometimes not; *Erle*, C.J., adding:—"The party has exclusive possession of the floor occupied by him, and exclusive control over the outer door of the floor:" and he repeated what had been previously stated, that the nature of the tenement could not depend on the presence or absence of the landlord, or the possession of a key of the outer door to the street. In that case, my brother *Keating* was also of opinion that the door to the street could not properly be considered an outer door: and I am of the same opinion as to the door in this case.

In these cases the Court found it extremely difficult to define in language what was "a house" within the meaning of the Act, or what was such an actual severance within the meaning of their own decisions as would constitute part of a house "a house" for the purpose of the franchise.

When the "Representation of the People Act, 1867," was passed, the term "dwelling-house" was introduced;

(*a*) *K. & G.* 413; 11 *C. B. N. S.* 33.

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but the Legislature equally abstained from defining what was a dwelling-house, except by declaring in the interpretation clause that the term "dwelling-house" should include "any part of a house occupied as a separate dwelling, and separately rated to the relief of the poor."

The principal difficulty under the former Act was to determine when part of a house was to be considered only part of a house, and when it was to be considered "a house" within the meaning of that Act, and which had to be determined with reference to its structure and its severance from the other parts of the building. This was a difficulty with respect to the *nature of the tenement*, which was the subject of occupation; and when the last Act was passed, and the Legislature enacted that a dwelling-house should include any part of a house, it would seem to have been with the express intention of avoiding the difficulties that had arisen as to when *part* of a house was to be considered a *house*, and, so far as the *subject of occupation* was concerned, to make it immaterial for the future whether the part of the house was to be considered a "house" or not. The Legislature, however, at the same time, by adding the words "occupied as a separate dwelling," introduced a qualification with respect to the *nature of the occupation*, as distinguished from the *subject of occupation;* thus making the *part* of a house a sufficient *tenement*, and putting it upon the same footing as an entire house, provided it was occupied in the manner and for the purpose specified, *viz.*, as a separate dwelling, and was separately rated. Part of a house, if used as a warehouse, counting-house, or shop, was a sufficient tenement for the purpose of the borough franchise under the Act of 1832; and the Act

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of 1867 seems to me to place part of a house occupied as a separate dwelling upon the same footing.

We next have to consider the effect of the words "occupied as a separate dwelling." These words appear to me, as I have already observed, to point to the nature and purpose of the occupation; and an occupation for mere professional purposes is not sufficient. *Cuthbertson* v. *Butterworth* (*a*). They cannot mean that there is to be an absolutely separate dwelling consisting of what is commonly or legally considered an entire house, because the tenement to which the words refer is described as *part* of a house used as a separate dwelling, meaning, I apprehend, that the *part* must be used as a separate dwelling. The words "separate dwelling," again, seem to require that the occupation as a dwelling must be separate, as distinguished from a joint occupation. There must, also, for the purpose of obtaining the franchise under sect. 3 of the Act of 1867, which, in this respect, corresponds with sect. 27 of the Act of 1832, be an occupation by the occupier as *owner* or *tenant*. Under the former Act, a person who occupied as a *lodger*, though in one sense a tenant, was not considered to occupy as owner or tenant within the meaning of that Act; and the same rule must prevail under the late Act, more especially as the franchise is now, by sect. 4, under certain conditions, given to lodgers in respect of their lodgings.

In the case submitted to us by the Revising Barrister, no question is raised as to the room of the claimant being occupied by him as a tenant; and the question really turns on whether such room is to be considered "*part of a house occupied as a separate dwelling.*"

(*a*) *Ante*, p. 188; *L. R.* 4 *C. P.* 523.

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Now, it is *part of a house*, and it is occupied by this claimant alone and not jointly with any other persons, and for the purpose of his residence or dwelling, and, as it seems to me, of his separate dwelling, and as an independent tenant. It is also found (whether rightly or not, we are not at liberty upon this case to inquire) to have been separately rated to the relief of the poor; and I am, therefore, of opinion that it must be considered a "dwelling-house" within the meaning of the 3rd section, as explained by sect. 61 of the Act of 1867.

In this particular case, it also appears to me that it may very well be contended that the room of the claimant was in contemplation of law a *dwelling-house* of itself, independently of the interpretation clause, as well as *a house* within the meaning of the Act of 1832; and, as this point was elaborately argued before us, and may arise in other cases, I will state my views upon it.

It is quite clear that *part* of a house, even a single room, may properly and legally be considered and described as *a house* or *dwelling-house*. For instance, Lord *Coke*, in treating of burglary, in 3 *Inst.* 64-5, says:—"A chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is *domus mansionalis* in law," which *Parke*, B., explains in *Monks* v. *Dykes* (*a*), to refer "to a chamber under certain circumstances, *viz.*, when a house is divided into several chambers, with separate outer doors." In that case Lord *Abinger* also makes the remark, that "a room within a house may be a dwelling-house or it may not." In *Lee* v. *Gautel* (*b*), where the question was as to the right of bailiffs to break open the door of a room oc-

(*a*) 4 *M. & W.* 569; 8 *L. J. Exch.* 73.
(*b*) *Cowp.* 1.

cupied by a lodger within the house, Lord *Mansfield*, after referring to the case of chambers in the *Inns of Court* and in colleges, opening upon a common staircase, as being *clearly several houses*, adds :—" So, if that which was one house originally comes to be divided into separate tenements, and there is a distinct outer door to each, they will be separate houses, as, *Newcastle House*." So, in *Reg.* v. *Eye* (*Mayor*), *In re Evans* (*a*), *Littledale*, J., says :—" If there be no landlord residing in a house, half a dozen different persons may be stated to have dwelling-houses within it." And the other judges thought the fact of the doors opening upon a common staircase made no difference; *Coleridge*, J., remarking that the passage was no more than part of the street. The following may also be mentioned as familiar instances of parts of houses being considered houses, *viz.*, chambers in the *Albany*, chambers in the *Inns of Court*, rooms in the colleges at the *Universities*, shops in the *Burlington Arcade*, flats in *Victoria Street*, apartments in *Hampton Court Palace*.

The decisions in *Cook* v. *Humber* (*b*), and *Henrette* v. *Booth* (*c*), and the cases there cited, are also conclusive to show that a single room may be a *house* or *dwelling-house* of itself, for the purpose of the parliamentary franchise. They also establish that the existence of an outer street door to the house, in addition to the outer door of the tenant's chamber, even although the tenant have not the key of it, and the street door is kept locked by a porter who resides on the premises, or even the landlord himself residing

(*a*) 9 *Ad. & E.* 680.
(*b*) *K. & G.* 413; 11 *C. B. N. S.* 33.
(*c*) *Hopw. & Ph.* 23; 15 *C. B. N. S.* 500.

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on the premises, would not prevent the room being legally a house of itself, provided it be structurally severed from the other parts of the house, and provided the tenant has an outer door of his own to his room, and has the complete control over that door.

It seems to me to be very difficult to distinguish this case in principle from many of those which have been referred to. In the present case, the room of the claimant is his sole residence and dwelling-place: structurally it is divided from and does not communicate with the rest of the house: there is nothing, in my opinion, which can properly be considered an outer door, except the door to his own room, over which he has complete control; and, though he has the use only of the staircase and some other conveniences in common with the other occupiers, if it were necessary to decide the point, I should be disposed to consider that his room was *a house* of itself, within the meaning of the Act of 1832, and a *dwelling-house* of itself, within the Act of 1867, independently of the interpretation clause in the latter Act.

It is tolerably clear, however, that, where a whole house is let out in apartments, as in the present case, it was not the intention of the Legislature that each of the occupiers of these apartments should acquire the franchise, because *being rated* was a necessary part of the qualification, and under the exception in the 7th section of the Act of 1867, in such cases, unless the apartments were separately rated at the time the Act was passed, the *landlord*, and *not the occupiers*, was required to be rated. In this case the occupiers are found to have been rated, and no question is submitted to us on that point: but it may well be doubted whether they could properly be so rated, unless the apart-

ments were separately rated at the time of the passing of the Act of 1867, and whether the provisions of the "Poor Rate Assessment and Collection Act, 1869" (32 & 33 Vict. c. 41), at all apply to cases where the occupier was not then liable to be rated, and where consequently there could be no rating of the owner *instead of the occupier* under that Act. If the question of rating had been raised, it is not improbable that this case would have been found to come within our decision in the late case of *Cross* v. *Alsop* (*a*), decided in last Michaelmas Term, so that the claimant would not be entitled to remain on the list of voters.

Another question which was argued at great length, and which indirectly arises, though it is not directly raised by the case submitted to us, is, whether the claimant is to be considered a mere lodger. Generally speaking, a lodger is a person whose occupation is of part of a house, and subordinate to and in some degree under the control of a landlord or his representative, who either resides in or retains the possession of or a dominion over the house generally, or over the outer door, and under such circumstances as that the possession of any particular part of the house held by the lodger does not prevent the house generally being in the possession of the landlord.

Where a landlord resides in part of a house, and there is an outer door from the street, and he by himself or his servants has the control of this outer door, and undertakes the care or control of rooms let to other persons, and the access to them, and those rooms themselves have not anything in the nature of an outer door,

(*a*) *Ante*, p. 444.

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and are not structurally severed from the rest of the house, there could be little hesitation in saying that an occupier of those rooms, being part of the house, is only a *lodger*. On the other hand, if there be no real outer door to the street, and neither the landlord nor his servants, nor any one representing him, occupies any part of the premises, or exercises any control over any part of them, and the rooms occupied by another person are structurally severed from the rest of the house, and have an outer door to the general landing or staircase, and no one but such tenant has or exercises any care or control over the rooms or *that* outer door, as a general proposition, the person so occupying those rooms could *not* properly be said to be a lodger. It is always important, in determining whether a man is a *lodger*, to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house; and this he may do, though he do not personally reside on the premises.

These views are borne out by the judgment of *Maule*, J., in *Toms* v. *Luckett* (*a*), and which was confirmed by my brother *Willes*, in the recent case of *Smith* v. *Lancaster* (*b*). They are also in accordance with many authorities where the occupation by a lodger of part of a house or premises has been held not to deprive the landlord of the general possession of the whole house; see, generally, *per* Lord *Hardwicke*, in *Fludier* v. *Lombe* (*c*); *per* Lord *Mansfield*, in *Lee* v.

(*a*) 2 *Lutw.* 19; 5 *C. B.* 23. 251.
(*b*) *Ante*, p. 287; *L. R.* 5 *C. P.* (*c*) *Cas. t. Hard.* 307.

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Gansel (*a*); also *Reg.* v. *Mayor of Eye* (*b*); and the recent cases of *Brewer* v. *M'Gowen* (*c*), and *Smith* v. *Lancaster* (*d*).

In *Stamper* v. *Sunderland, Overseers* (*e*), the Court decided that, where a house was wholly let out in apartments, as in the present case, and the several occupiers were not separately rated at the time the Act passed, *the owner* was, by the express terms of sect. 7 of the "Representation of the People Act, 1867," the proper party to be rated, and that the occupiers of the several rooms could not properly, after the passing of that Act, be rated in respect of their separate occupations. I was of opinion in that case, as each tenant of a room had the sole and exclusive occupation and control over it, although he had the use of the staircase and some other parts of the house in common with the other tenants, and as neither the owner or landlord, nor any person representing him, resided in or occupied any part of the house, that these tenants of the rooms must be considered as occupiers of separate tenements for rating purposes, and that each room must be considered a separate and independent dwelling-house or tenement; and I see no reason to change that opinion. My brothers *Byles* and *Montague Smith* were also of opinion that the tenants would, under the statute of *Elizabeth*, have been liable to be rated if no other legislation had intervened. My brother *Smith*, no doubt, intimated an opinion that such persons might be lodgers, and their rooms lodgings within the meaning of sect. 7 of the late Act, and a

(*a*) *Cowp.* 8.
(*b*) 9 *Ad. & E.* 670.
(*c*) *Ante*, p. 275; *L. R.* 5 *C. P.* 239.
(*d*) *Ante*, p. 287; *L. R.* 5 *C. P.* 251.
(*e*) *L. R.* 3 *C. P.* 388; 37 *L. J. M. C.* 137.

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similar argument was urged before us in this case. But the 4th section, on which the lodger franchise depends, was not then under consideration, and the 7th section being only a rating clause, and its language apparently taken from Sturges Bourne's Act, 59 *Geo.* 3, c. 12, s. 19, I think the language of that section has little effect upon the construction to be placed on the franchise clause of the Act.

Some stress was laid upon the words "wholly let out in apartments or lodgings" in the exception to the 7th section, including cases where the landlord did not reside upon the premises, but I do not think this argument is entitled to much weight, because "apartments" is a proper term to apply to rooms in a house constituting separate houses in themselves, as was said by *Maule*, J., in the case of *Score* v. *Huggett* (*a*), and rooms may also be *lodgings* where, although the landlord does not reside upon the premises, he retains the general control over the house and the outer door.

In this case the landlord has no control or dominion over the house or over the outer door. He is not, I think, in any sense the occupier of the house, nor can the possession of the occupiers of the rooms be deemed his possession or occupation of the house generally. I think it cannot properly be said that there is any occupier of the whole house, no one tenant having any control over the house generally beyond the others, nor can the whole of the tenants in any sense be considered as joint occupiers of the house; and I am of opinion that each tenant is the occupier of his own room only in the independent position of a tenant, and that his

(*a*) 1 *Lutw.* 198; 7 *M. & G.* 96.

occupation is not subordinate to that of any other person, and is not the occupation of a mere lodger.

As I have already intimated, I think it was not the intention of the Legislature, in the Act of 1867, that persons occupying separate rooms in a house where the whole was let out in separate apartments, should have votes, because under that Act rating was made an essential part of the qualification, and by the same Act such persons could not be rated unless they were separately rated at the time when the Act was passed. The real question of the right of such persons to the franchise is not, however, raised by this case, upon which the only question submitted for our determination, and which we have to decide, is, whether the premises occupied by the claimant were a dwelling-house within the meaning of the Act.

Upon that question it seems to me that the Legislature intended to make "any part of a house," as distinguished from a whole house in the sense in which the term house had been previously interpreted by the Courts, a sufficient subject of occupation, provided it was occupied for the purpose of a dwelling, and as a separate dwelling in the sense of the occupation not being a joint occupation with others of that particular part of the house, and, provided there was a wholly independent occupation as distinguished from that of a mere lodger, and the part of the house was separately rated. The room of the claimant was part of a house, and the nature of his occupation in this case seems to me to fulfil the other conditions; and, it being found that he was separately rated, I am of opinion that he must for the purposes of this appeal be considered the occupier of a dwelling-house, and that his premises

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control of the house or outer door, or any dominion over him or the rooms which he occupied, or the outer door of those rooms, and that the claimant, under these circumstances, occupied as a *tenant*, and not as a *lodger*, and that his rooms were not lodgings within the meaning of the franchise clause of the Act of 1867.

As the same difference of opinion, however, exists upon the Bench in this case, as in *Thompson* v. *Ward*, the decision of the Revising Barrister will stand.

Attorneys—For Appellant, in *Thompson* v. *Ward*, *Hill & Hoyle.*

For Respondent, *Sharp & Ullithorne.*

For Appellant, in *Ellis* v. *Burch*, *Coode*, *Kingdon, and Cotton*, for *T. Floud*, *Exeter.*

For Respondent, *G. E. Philbrick*, for *Burch & Barnes, Exeter.*

CASES

ARGUED AND DETERMINED

IN THE

COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18,

IN

MICHAELMAS TERM, 1871,

AND

HILARY AND TRINITY TERMS, 1872,

IN THE

THIRTY-FIFTH YEAR OF QUEEN VICTORIA.

BENDLE, Appellant; WATSON, Respondent.

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Nov. 17.

A description of qualification which is "insufficient" by reason of being erroneous may be amended under sect. 40 of 6 *Vict.* c. 18, provided the qualification described be not a different qualification from that proved.

A house was described on the register as No. 4. It had formerly been so numbered, but some years ago it was changed by the local authorities to No. 9. The person objected to had been in occupation when it was No. 4, and continuously since:—*Held*, the Revising Barrister had power, and ought, to have amended.

THE case stated:—

At a Court held for the eastern division of the county of *Cumberland* for the revision of the list of voters for the township of *English Street*, objection was duly made to the name of *John Spiers Baker* being retained

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upon the list of voters for the said township. The facts were as follows:—

The name of *John Spiers Baker* appeared upon the register in the following form:—

Baker, John Spiers	*Town Villa, Litherland,* near *Liverpool.*	Freehold house and shop	4, *English Street, Carlisle*

It was proved that the premises in question were and had been for six years previously numbered 9, *English Street.* It was also proved that at one time the said premises had been numbered as 4, *English Street,* but that six years ago the number had by competent local authority been changed from 4 to 9, and had remained 9 ever since. The said *J. S. Baker* was proved to have been on the register for the premises in question when they were numbered 4, and had so remained on the register without objection up to the present time. It was also proved that in the same *English Street* were other premises numbered 4 which do not belong to the said *J. S. Baker,* and in respect of which he does not claim to be entitled to the franchise.

The Revising Barrister was asked to amend, by altering the number in the fourth column from 4 to 9.

He decided that the said *J. S. Baker* had not proved his right to have his name retained upon the said list of voters in respect of the qualification described in such list, because the number of the house and shop aforesaid was wrongly stated to be 4 instead of its proper number 9, and he declined to amend as asked because he did not consider that he had the power to do so, or that he would be right in exercising the power if he had it.

Except for the reason aforesaid, the said *J. S. Baker* had a right to have his name retained upon the said list. The names of seven other persons, whose names and qualifications were set out in the schedule thereunto annexed and therein described as they would appear if the description were amended according to the facts, were objected to under similar circumstances. The Revising Barrister expunged the names of the said *J. S. Baker* and of the seven other persons from the lists.

If the Court should be of opinion that the Revising Barrister had the power to make the aforesaid amendment, and ought to have exercised it, the name of the said *J. S. Baker*, with the amendment asked for as aforesaid, was to be restored to the said list, as also the names of the said seven other persons, altered as they appeared in the said schedule.

Joseph Sharpe for the appellant. The Revising Barrister had power to amend and ought to have done so, under 6 *Vict.* c. 18, sect. 40. He has not found in the case that the description was insufficient to indicate the subject of qualification, and must therefore be taken to have purposely abstained from finding that the description was insufficiently described for the purpose of being identified. Two expressions are used in the section, the difference between which is important in ascertaining the intention of the Legislature, viz., "the nature of the qualification" and "the description of the property." Here the "nature of qualification" is "freehold house and shop," with which no fault was found. The objection was made to the description in the fourth column. It may be

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useful to call attention to a peculiarity of the registration for the county as compared with that of the borough, viz., that those already on the register, &c., need not claim. This is a case of the county qualification. Sect. 4 of the 6 *Vict.* c. 18, defines the classes to whom the overseers are to give notice as, those not on the register, and those who being on the register shall not retain the same qualification or place of abode. By implication those already on the register as the appellant was, and not coming within those classes, are entitled to remain undisturbed. Sections 5 and 6 only add the new list to the existing register. The list for the county is the old list *plus* the new voters. The notice under sect. 4, Schedule A, No. 2, does not apply to the appellant.

[BRETT, J. Though it may be you were not bound to claim, yet when objected to were you not bound to attend to defend the vote?]

As a fact, the appellant did appear.

Secondly, the Revising Barrister could and ought to have amended. Here the fault is not in the third column, as it was in *Nicholls* v. *Bulwer* (*a*), where the description was "freehold rent-charge issuing out of freehold houses," but the qualification proved was "freehold land with houses upon it," and the majority of the Court thought that as freehold land and freehold rent-charge were both mentioned by the statute as distinct qualifications, the Revising Barrister had no power to amend. This case is only one of matter

(*a*) *Ante*, 472; *L. R.* 6 *C. P.* 281.

omitted or insufficiently described, supplied to the satisfaction of the Barrister.

[BRETT, J. Is not the description wrong in fact?]

The correction was supplied before the completion of the revision.

When the claim was originally made the number was correct.

[BRETT, J. But wrong at the time of the revision?]

But it was only the description of the property.

He referred to sect. 101.

In *Flounders* v. *Donner* (*a*), the case of a borough vote founded on a qualification in respect of two houses occupied in succession, the claimant having omitted the number of the first house, the Barrister decided on that account against the vote, and the Court held he was right. All the Court commented upon the absence of evidence on the part of the appellant to supply the deficiency, and assumed that if there had been sufficient offered the Barrister would have inserted the number. They did not express a doubt that he had the power to do so.

In *Barlow* v. *Mumford* (*b*), the number of the house, the subject of claim, situate in a street, had been omitted, but the Revising Barrister, after evidence received, inserted the number, and the Court held he was right. *Erle*, C.J., pointed out that in cases where

(*a*) 1 *Lutw.* 365; 2 *C. B.* 63.
(*b*) *Hopw. & Ph.* 335; *L. R.* 2 *C. P.* 81.

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the "notice was purposely illusory and misleading, it would be for the Barrister to refuse to amend."

Nicholls v. *Bulwer* (*a*) is a very different case to this. It is one of description of the nature of the qualification in column 3.

If the description of the property in column 4 be incorrect, it is submitted that it is "insufficient."

[KEATING, J. In *Luckett* v. *Knowles* (*b*) (where the Court held the Revising Barrister had power to substitute "*Queen Square, Bloomsbury,*" for "*Greenwich,*" in column 2 as the place of abode of the claimant) two of the judges were inclined to think the words of sect. 40, "shall correct any mistake," gave a wider discretion to the Revising Barrister than the particular instances afterwards set forth in the section.]

The amendment contended for has been constantly made.

J. H. Fawcett for the respondent. It is necessary to ascertain whether this was a mistake within sect. 40; whether it was an insufficient description which the Revising Barrister had power to amend; and whether, if he had the power, he would do right to exercise it in correcting or amending. It is submitted that the inaccuracy is not the mistake of the overseer or the Clerk of the Peace. Though it may not be necessary to make a fresh claim, it is still the duty of those entitled to the franchise to see that their description *continues* to be rightly described, or is altered from

(*a*) *Ante*, 472; *L. R.* 6 *C. P.* 231. (*b*) 1 *Lutw.* 451.; 2 C. B. 187.

time to time as the change of circumstances demands. Neither the overseers nor the Clerk of the Peace have any power of themselves to alter the lists. The only one who could set it right was the claimant, who has, it appears, slept on his rights for six years.

As to the point made on sect. 4, it is contended that the appellant was one of those "who, being upon such register, shall not retain the same qualification . . . . as described in such register." He has, it is true, the same particular house, but the wrong number indicates another house, and therefore another qualification. No. 9, *Hyde Park Place*, could not be said to be the same as No. 4.

The appellant ought to have made a fresh claim. As to the second point, the Revising Barrister had not power to amend under sect. 40.

In *Hitchins* v. *Brown* (*a*), *Tindal*, C.J., observes, "When we look at that form it appears to me to be quite clear that the third column was intended to point out the *general nature* of the qualification, and the fourth to give a more particular description of it." What was done here was in effect to receive evidence of another qualification.

[WILLES, J. That case is against you, if the judgment of *Coltman*, J., is referred to.]

In *Bartlett* v. *Gibbs* (*b*), the Court, in a considered judgment, held that the Revisor could not add to col. 4 the description of one house which had been omitted.

(*a*) 1 *Lutw.* 328; 2 C. B. 25. (*b*) *Ibid.* 73; 5 *M. & Gr.* 81.

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Here the description is altogether erroneous, and cannot be said to be insufficient.

WILLES, J. By the 40th section of 6 *Vict.* c. 18, it is enacted that, "if any person, whose name is included in any such list, or his place of abode, or the nature or description of his qualification,"—that is, the qualification which, in the judgment of the Revising Barrister, he really has, not merely that appearing on the list—"shall, in the judgment of the Revising Barrister, be insufficiently described for the purpose of being identified, such Barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such Barrister before he shall have completed the revision of such list, in which case he shall then and there insert the name in such list." This is sufficient to show that "place of abode," and "nature and description of the qualification" (the nature contained in the third, and the description in the fourth column of the form) stand on the same footing. If, therefore, the Barrister may amend the place of abode, and may, notwithstanding the place of abode in the list intelligibly describes another place, amend by an alteration of the number, inserting that of the house intended, on the ground of the place of abode being "insufficiently described"—and insufficiently includes erroneously—he may similarly also amend as erroneous the description of the qualification, unless the amendment come within the proviso that, "Whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters, or claim, as the case may be, nor shall the Barrister

be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same." Here a distinction is drawn between the qualification, or the description of it, and the description of the place of abode. It is necessary, therefore, to see, first, whether there is power under the earlier part of the clause to alter an entirely erroneous statement; and, secondly, whether the case falls within the proviso, and if so, whether it further falls within the exception to the proviso. With this view let us suppose the case of a house, No. 4 in a street, described on the list as No. 40; objection is taken before the Revising Barrister; it turns out there is no No. 40 in the street; this would be not so much erroneous as insufficient; it would be practically the same as if there were no number at all in the description, and such a case would seem to be amendable, as if there were a total omission of a number. But suppose it were proved that a No. 40 had been built since the preparation of the list, then the description having been insufficient would become erroneous also, but the power to amend would not thereby be taken away, for the description would still be insufficient to my understanding; and it appears that this consideration prevailed in *Luckett* v. *Knowles* (*a*), though two of the judges there were besides inclined to give a wide meaning to the words in the commencement of sect. 40, "correct any mistake."

The result is that as far as respects the words of the section (apart from the proviso), there was

(*a*) 1 *Lutw.* 451; *S. C.* 2 *C. B.* 187.

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power to amend. The description was unquestionably insufficient, and the reasoning is not altered because it was also erroneous. The intention then was to describe a house formerly No. 4; the description was insufficient, and there was power to amend. We must now consider the proviso, Was this amendment a description of any "other qualification than that which is described in the list?" Taking this proviso in conjunction with the words, "*his* qualification," previously used, and the reflection that to a person who had left the street when this house was No. 4, and returned without knowing of the alteration, it would indicate this house, it is impossible to say this is a description of another qualification; it is an insufficient description of the claimant's qualification, not a description of another qualification; it is the old description, which at one time was true. Then as respects the exception, "except for more clearly and accurately defining the same," the same test applies; it would be a true description to a person who left the street several years back, and a false one to a person who only knew the new state of things. Then as to the words "change the description of the qualification:" there, I think, "qualification" must mean the nature of the qualification, *e.g.*, freehold, while the object of a number is to individualize, and perhaps, in that sense, to describe. I think that, throughout, the word "his" governs the meaning, and as the qualification is the same, and the description one which might in one sense be true, inasmuch as it might indicate this house to some people, and there was no falsification, or intention to deceive, the Revising Barrister ought to have amended. The cases relied on by

the respondent, viz., *Bartlett* v. *Gibbs* (*a*), and *Onions* v. *Bowdler* (*b*), do not apply, as will appear when they are taken in connection with *Hitchins* v. *Brown* (*c*), and *Flounders* v. *Donner* (*d*), (in which last *Erle*, J., explains that there were no sufficient materials to enable the Barrister to amend by inserting the number); for in the two first the character of the qualification would have been entirely changed by the proposed amendment, the true qualification being houses in succession, and no particular description of each house, but of one only being given. If I could see that this was an attempt to introduce what was not intended to be described, I should say there should be no amendment. That was so in the two cases referred to. Here, however, there is but one qualification, and not a sufficient description; the Revising Barrister, therefore, should have amended, and his decision ought to be reversed.

KEATING, J. The object of the Legislature in framing the proviso was to prohibit the Barrister from inserting some other qualification different to that in the list, but here the qualification was the same, and there was only a variation in its description made by third persons, over whom the claimant had no control. It was intended that the claimant should not come and prove a different qualification to that of which he had given notice. Here the difficulty arises in the 4th column, where there is, in one sense, a mis-description,

(*a*) 1 *Lutw.* 73; *S. C.* 5 *Man. & G.* 81.

(*b*) 2 *Lutw.* 59; *S. C.* 5 *C. B.* 65.

(*c*) 2 *C. B.* 25.

(*d*) 1 *Lutw.* 328; *S. C.* 2 *C. B.* 63.

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but when the nature of the qualification and the qualification itself were proved to remain the same, I think the Revising Barrister had power to amend. In truth, though six years had elapsed since the number of the house had been changed, yet the question is the same as if the number had been changed the day before the 31st of July. *Luckett* v. *Knowles* (*a*) is an authority that a wholly wrong description may be amended under the 40th section. It is true that was a case of wrong description of the place of abode in a borough list, whilst this is one of the county franchise, and a wrong description in the fourth column of the list, and so far there is a distinction, but the principle established is the same, namely, that not only a total omission (as indeed sect. 40 expressly directs) may be supplied, but also an erroneous description may be changed. Here it is not found by the Barrister that any one would be misled as to identity of the house, and rightly, as he was no doubt convinced that there was a sufficient identification, but he thought that on the strict words of the statute he had no power to amend; and even if he had, it would not be right for him to do so. I think he was wrong, that he had the power, and *ought* to have amended.

BRETT, J. This is a difficult case; but after full consideration, I think that the Revising Barrister had power, and was also bound, to amend. If it were matter of discretion with him, we ought not to interfere; but as I understand the Act, he was bound to

(*a*) 1 *Lutw.* 451; *S. C.* 2 *C. B.* 187.

do so. The point of time to which we must direct our attention in considering the present question, is the moment when the matter was before the Barrister. The description then was inaccurate, for though, if the local authorities had no legal power to alter the number, what they did would not alter it, still, as it appears that they had, this house was No. 9. The third and fourth columns of the list together make up the description of the qualification—the third giving the description of the nature, and the fourth the description locally, of the subject-matter of the qualification. The description in the list then was an inaccurate description of the qualification, and the case was not one falling within sect. 101, for the difference was so great that the description on the list could not be commonly understood to mean the house in question, as no one can say that No. 4 would be commonly understood to mean No. 9, and indeed, if it could, the amendment would not be necessary. The question therefore is, whether there was such an inaccuracy as the Barrister could (and if so, I think he ought to) amend under section 40. If the case be not within that section, there was no such power. I do not think that this was a mistake within the first part of the section, which points to such as might be made by the overseers and others in copying or the like, which, but for this Act, no one would have power to alter, but as to which, under these words, power is given to the Revising Barrister. The question is, therefore, whether, under the subsequent part of the section, the Barrister had power to make the amendment. The view I take is this, that if the inaccuracy be such as to render the description of the qualification the description of a qualification

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other than that which was to be proved, no evidence can be given to support an amendment; but if it amount only to an insufficient description of the qualification which was to be proved, the Revising Barrister has power to amend. The earlier part of the section applies both to cases where there is objection made and where there is not. In the first place, the Barrister is to expunge the name of every one whose qualification is insufficient in law, or who is proved to be dead. Then, wherever the Christian name, place of abode, &c., shall be *wholly omitted*, or where any of the required details are *insufficiently* described, he is to expunge the name unless the matter omitted or insufficiently described be supplied to his satisfaction by evidence; but he is not to do this if the case come within the proviso. This proviso, which is itself an exception to the section, is oddly drawn, for it contains an exception to itself. The words are—"Nor shall the Barrister . . . . change . . . . except for . . . . more clearly . . . . defining the same." This presumes that he may, under the power of amendment, "change" the description, but limits the change to cases within the exception. It is further worthy of notice, that the expression is "change," not "add to," so far as that may be done without "change." If, therefore, there be a description in point of fact, though insufficient, it may be amended by changing it "for the purpose of more clearly and accurately defining it," but not to the extent of substituting by the change some other qualification than that intended. The question is, therefore—Is this an *insufficient* description of the qualification within the meaning of the Act? I should have doubted whether it was, but for the case

of *Luckett* v. *Knowles* (*a*). There it was argued, as here, that the description (of the place of abode in that case) was not "insufficient," but entirely erroneous, and described something else. It is true it was the place of abode which was in question, but the "place of abode" is in the same part of the section as "the nature and description of the qualification," and, therefore, the same definition must be put upon "insufficiently" in regard to both; and, as *Tindal*, C.J., and *Erle*, J., in that case held a wrong or mistaken description of a place of abode to be an "insufficient" one, the same rule must apply to a description of the nature of the qualification not so erroneous as to describe a qualification other than that to be proved. Taking that case to govern the present, it is an authority that in this case there was an insufficient description within the section, and, if so, on proof, the Barrister had no discretion, for the statute says he "shall," and he was therefore *bound* to, amend.

COLLIER, J. I think that the first words of the section apply to an error such as this, namely, putting No. 4 for 9; but this need not be insisted on, because under the second part, an insufficient description may be amended. It is said that the description is not insufficient because it is erroneous, but this is a fallacy, for it may be both. It is then said that the proviso applies, which does not allow evidence of any other qualification; but I do not think that this was another, but the same qualification. It appears to me,

(*a*) 1 *Lutw.* 451; 2 *C. B.* 187.

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therefore, that the Barrister could, and ought to have amended.

Decision reversed.

Attorneys—For Appellant, *Carter & Bell*, agents for *J. Bendle, Carlisle.*

For Respondent, *Johnston & Mounsey*, agents for *H. Dobinson, Carlisle.*

TOWNSHEND, Appellant; THE OVERSEERS OF ST. MARYLEBONE, Respondents.

Nov. 17.

The description "dwelling-house" is not so appropriated to the franchise created by the "Representation of the People Act, 1867," sect. 3, as to exclude proof under it "of a house" within sect. 27 of 2 *Will. IV.* c. 45.

A voter's qualification had been described by overseers as a "dwelling-house," but (it being jointly occupied) the voter gave evidence to support it as a house:—*Held*, that he might do so, and no amendment was necessary. *Brett*, J., *dissentiente.*

THE Case stated:—

At a Court held for the revision of the list of voters for the parish of *St. Marylebone*, in and for the borough of *Marylebone*, *Lionel Townshend* duly objected to the name of *James Blackman* being retained on the list of voters for the said borough.

The said *James Blackman* had occupied jointly with another person the premises in respect of which his name had been inserted by the overseers of the said parish in the lists of persons entitled to vote in the election of members for the said borough. He had so occupied the said premises during the twelve calendar months next previous to the last day of July last, had been rated in respect of the said premises for all rates for the relief of the poor in the said parish, made during the time of his occupation, had duly paid all the poor rates and assessed taxes which had become payable from him in respect of such premises, previously to the 6th day of April then next preceding, and had

resided for six calendar months next previous to the last day of *July* last within the said borough. The clear yearly value of the premises so occupied by the said *James Blackman* and another was of an amount which, when divided, gave a sum of much more than £10 for each occupier. In the parish of *St. Marylebone* the overseers make out only one list of all persons entitled to vote in the election of members to serve in Parliament for such borough, including in such list as well those entitled to vote in respect of the occupation of premises of the clear yearly value of not less than £10, under 2 *Will.* 4, c. 45, as those entitled to vote as inhabitant occupiers, as owners or tenants, of any dwelling house within the said borough under the "Representation of the People Act, 1867." In the said list, the qualification in respect of which the name of *James Blackman* was inserted, was described in the third column as a dwelling house. The house, in fact was originally constructed, and is now used, as a shop with dwelling-rooms above.

It was objected that inasmuch as the qualification, in respect of which the name of *James Blackman* had been inserted in the list, was described as a "dwelling-house," his title to have his name inserted in such list could only be under the 3rd sect. of the "Representation of the People Act, 1867," and as it was therein provided that no man should, under that section be entitled to be registered as a voter by reason of his being a joint occupier of any dwelling-house, that therefore the said *James Blackman* was not entitled to have his name inserted in the said list.

The Revising Barrister held, that if the nature of the qualification was insufficiently described, he had power

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to amend the description of the qualification for the purpose of more accurately defining the same, and he did so by substituting house for dwelling-house as the nature of the qualification, and retained the name of the said *James Blackman* in the said list.

[Other appeals were consolidated.]

The question upon which the judgment of the Court was requested was whether or not the said Barrister did or did not rightly decide that the said *James Blackman* was entitled to have his name inserted in the register of voters for the said borough of *Marylebone*. If the Court should be of opinion that his decision was wrong, the name of the said *James Blackman* was to be removed from the register.

J. E. Gorst for the appellant. The amendment exceeded the powers of the Revising Barrister. It could not be affirmed that this was a case of insufficient description. The effect of the alteration from "dwelling-house" to "house" was to substitute an entirely different qualification, especially in this, that for the one twelve, for the other six months' *residence* is required. "Dwelling-house," as applied to the electoral franchise, has acquired or been endowed by statute with a peculiar meaning. It first appeared in the "Representation of the People Act, 1867," in sect. 3, which created a new qualification so described, but limited it by the proviso "that no man shall, under this section, be entitled . . . . by reason of his being a joint occupier of any dwelling-house."

[WILLES, J. The claimant would have been entitled under the Reform Act, 2 *Will.* 4, c. 43, in respect of a

house. House is the *genus*, dwelling-house is the *species*. If he may vote under that statute by reason of the former, why not of the latter?

KEATING, J. If there were two lists, one for "dwelling-houses" and one for "houses," there might possibly be a difficulty. But can you say a dwelling-house is not a house?

WILLES, J. Was this in fact a dwelling-house?]

Yes. Some people lived there, but it is not stated that the claimant lived there. He may have rented the shop and lived elsewhere.

[WILLES, J. If this were decided under the 2 *Will.* 4, c. 45, prior to the "Representation of the People Act, 1867," could you say more than that the claimant had stated his qualification in a manner unnecessarily specific, stating more than he had need to prove?]

But the later Act has given a stamp, a technical meaning, to "dwelling-house," and did not intend that those claiming under the one description, and failing to prove enough to support it, should at their option have recourse to the other.

[BRETT, J. You say that the expressions are as distinct as "house" and "shop"?]

Exactly so. The new word is a compound one, and used in the Acts to create a new and distinct qualification.

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[BRETT, J. Suppose in the Act 2 *Will.* 4, in sect. 28 "dwelling-house" had been inserted along with "house, warehouse, counting-house, shop," is not that the effect of the Act of 1867?]

The expression has been used expressly to draw another distinction in regard to houses than had before existed. Then this is one of the newly conferred franchises, which by sect. 26 of the "Representation of the People Act, 1867," it is declared "shall be in addition to, and not in substitution for any existing franchises."

The case comes within the illustration of Mr. Justice Brett in his judgment in the preceding case (*a*) of a qualification being proved different to that which was described in the notice. The objector has two qualifications to investigate.

[BRETT, J. Was it not misleading to the objector if he went to inquire, and found that the property described was not a dwelling-house?]

No doubt it was. Sect. 56 makes the existing laws of registration applicable to the new franchise, and sect. 59 provides that the Act of 1867 shall be "construed as one with the enactment for the time being in force relating to the Representation of the People."

No one appeared as counsel for the Respondents.

WILLES, J. I think that the decision of the Revising Barrister was right. Whether the precise course he

(*a*) *Ante*, p. 591.

followed of amending was the correct one it is unnecessary to say. It did no harm, but it seems to me it was unnecessary. The claim to vote in respect of a dwelling-house would be made out by showing that the claimant was entitled to vote in respect of a dwelling-house, in fact, coupled with further proof that it came within either the conditions required under the Act of 1832 in respect of a house, or of the conditions required by the Act, 1867, in respect of a dwelling-house. The former statute gave the right in respect of a house, and it is not necessary to look far into cases to show that there might be a house not a dwelling-house within that statute, notwithstanding the varieties described as warehouse and counting-house. The word house is used generally, and includes the species—a house which is a dwelling-house and one which is not—and under the Act of 1832, if a man, in stating the nature of his qualification, had described it as a "dwelling-house," he would have given an unnecessarily particular description, just as if he had described it as painted blue or yellow. This might or might not be rejected, according to circumstances, though there might be a case in which the description dwelling-house might be misleading, and therefore could not be rejected as immaterial. If his claim were made under the Act of 1832 he would start with proving he had a house which was a dwelling-house. It would be no objection that though only bound to name the genus, he had also described the species. He would then go on to prove the conditions required by the Act of 1832; the value in the present case would bring it under sect. 29, and the claim and description here would be quite good for a

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dwelling-house, fulfilling the conditions of the Act of 1832. Things so standing, the Act of 1867 is passed to enlarge the franchise and increase the number of voters. Yet it is insisted that it has the effect of defeating, in this instance, a claim to vote, which was abundantly sufficient to fulfil the conditions of the Act of 1832. After considering the Act of 1867, the question to my mind is unarguable, and the claimant must succeed. It is urged that the Act of 1867 gives the franchise for a dwelling-house, on conditions less stringent than the Act of 1832,—as, for instance, in respect of value, though restricted as to joint occupancy, —and that, giving a new phrase and subject of claim, viz., "dwelling-house," it constitutes a distinct franchise, so that "dwelling-house," when used as a description, necessarily means a claim under the Act of 1867; and reference is made to sect. 59, which enacts that the two statutes are to be read together, to show that the use of the word "dwelling-house" specifies this claim to be in respect of a qualification under the Act of 1867. But it is a fallacy to say that because a larger right as respects a dwelling-house is given by the Act of 1867, therefore the word "dwelling-house" is to be restricted to one under the Act of 1867, though by law, in respect of a dwelling-house, a man may claim, either under the Act of 1832, as for a house, or under the Act of 1867, as for a dwelling-house. The true result is to treat the franchise under the Act of 1867, not as a totally distinct franchise, but as an expansion of the franchise as regards a "dwelling-house;" and if the claimant fail under the Act of 1832, I think he may have recourse to the Act of 1867, and *vice versâ*. The description of the qualifi-

cation and nature of the claim is the same, and I reject the notion that the Act of 1867 has the effect of taking away a right under the Act of 1832. I think that no amendment was necessary, (as I gather was the barrister's opinion, though he made it,) and that he was right in retaining the name.

KEATING, J. I am of the same opinion. The Act of 1867, in terms, leaves untouched the franchise of the Act of 1832. It is conceded that under the latter a man might, under the description "dwelling-house," prove a qualification in respect of a "house;" but it is said that the Act of 1867 does away with this, and makes such an alteration as to deprive him of his right, because it gives the franchise to a certain sort of dwelling-house, which did not formerly confer it; or rather to a certain sort of dwelling-house dwelt in under certain conditions. This would be a strange result, though if it were clearly intended we should be bound to accept it, but I think it is not so. It was here proved in terms that there was a dwelling-house such as would confer the franchise under the Act, 1832, and therefore no amendment was necessary.

BRETT, J. I unfortunately differ from the rest of the Court, and am probably wrong; but as the parties are entitled to the opinion of each member of the Court, I am constrained to say that mine is that the Revising Barrister was clearly wrong. Under the statute of 1832 different qualifications are given under sect. 27, namely, "house, warehouse, counting-house, shop, or other building," and though in fact several of these terms include some of the others, as "house"

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includes "warehouse," yet it has always been held that as the Act specifies each, if the claimant used as description one of these terms, he could not prove a qualification specified by another; if he claimed as for a shop, and the proof was that he so occupied rooms with it as to make it a house, he would fail. What, then, is the effect of the Act of 1867? By this Act a new qualification is created, not by occupation of a house, but inhabitancy of a dwelling-house, and since, by sect. 59, it is expressly enacted that the two statutes are to be construed as one, it is exactly as if the new qualification were inserted in sect. 27 of the Act of 1832. If that were so, the description must be accordingly, and if the description of the qualification were "dwelling-house," the claimant could not support it by proof of a "house." It is said that this construction takes away a right, but I cannot think so, for no one doubts the claimant's qualification. He has only wrongly described it; and if that be so, then, by the very decision which we have just delivered in *Bendle* v. *Watson*, he cannot be allowed to amend and prove another description. The reason given in the cases why, under sect. 27, the proof of qualification should be thus restricted, is, that otherwise objectors would be misled, and that the Court is bound to care equally for the objector as for the claimant; and here the description would almost inevitably mislead, for if an objector found the house was not a dwelling-house, or was inhabited by joint-occupiers, he would rest content with his inquiries, and yet before the Barrister he would find his objection useless, because a qualification was set up under the Act of 1832, under which there was no necessity for dwelling personally, and joint

occupancy was allowed; and though there must exist a certain value as to that, he has been thrown off his guard, and made no inquiry. I think it clear that in the present case there was a description of another qualification, and that the decision should be reversed.

COLLIER, J. It seems to me clear that the decision was right, and that no amendment was required. It is admitted the claimant was entitled to the franchise under sect. 27 of the Act of 1832, as the occupier of a house. Is he then to be deprived of this because he has described his house as a dwelling-house? It is a house, and the only effect is that he has imposed on himself a greater burden of proof than is required by the statute. It is said that the word used indicates a new qualification, viz., that under the Act of 1867, but as this is an addition to those formerly created, the description is not the worse for describing the new one, even supposing that it does describe it; but this is hardly so, for the new one is given to an inhabitant occupier of a dwelling-house, and here the claim does not say anything about inhabitancy, and therefore this is not a description under the new Act. I also think no amendment was necessary.

Decision affirmed.

Attorney for Appellant, *A. Beddall.*

CALVER, Appellant; ROBERTS, Respondent.

Nov. 17.

An objector described as his place of abode, a place where he had lived, but from which he had recently removed. It was the same as appeared on the Register against his name. It was proved that his new abode was very near to the old one, and that (he being well-known in the locality) he could easily be found. *Held*, that the actual place of abode should have been described and that the notice was, therefore, bad.

Melbourne v. *Greenfield*, Kea. & G. 261, affirmed.

THE case stated:—

1. At a Court held at the County Court, *Brentford*, before one of the Barristers appointed to revise the lists of voters for the southern division of the county of *Essex*, the vote of *Thomas Davis*, whose name appeared upon the copy of register relating to the hamlet of *Brentwood*, was objected to by *James William Calver*, a person on the register for the time being for the said division of the said county.

2. The said *J. W. Calver* appeared and proved that he had, within the time required by the Registration Acts, duly served upon the overseers of the said hamlet and upon the said *Thomas Davis* notices of objection to the vote of the said *Thomas Davis*, which notices were in all respects, except as to the statement of the abode of the said objector, in compliance with the Registration Act.

3. In the said notices the objector had described himself as "*James William Calver*, of *Pembroke Road*, *Walthamstow*, *E.*, on the register of voters for the parish of *Walthamstow*, in the southern division of the county of *Essex*."

4. It appeared that some years previously to the month of *August*, 1871, the said *James William Calver* had resided in a house in *Pembroke Road*, *Walthamstow*, and that his place of abode was so

described in the register for the time being. In the said month of *August*, however, and a few days before his signing the said notices of objection, he had removed to a house known as 1, *Grosvenor Park Terrace, Grosvenor Park Road*, and he had let his house in *Pembroke Road* to a tenant who was in occupation of it at the time of the signing of the said notices.

5. At the time the objector had originally come into occupation of his house in *Pembroke Road* he had occupied therewith a garden, which garden entered backwards from his house in *Pembroke Road* to a road called *Wingfield Road*, which ran parallel with *Pembroke Road*. The said garden extended on one side to a road called *Grosvenor Park Road*, which ran at right angles to *Pembroke* and *Wingfield Roads*. Some few years ago, a strip of land fronting the *Grosvenor Park Road* had been taken from the garden, and upon this strip of land a row of six houses fronting to *Grosvenor Park Road*, called *Grosvenor Park Terrace*, had been built. The houses now numbered 4, 5, and 6, which were the houses nearest to *Pembroke Road*, had been built about three years; but the house now numbered 1, which occupied the angle formed by *Grosvenor Park Road* and *Wingfield Road*, had only been just completed in *August*, 1871, when the said *James William Calver* removed into it. The distance from his former house in *Pembroke Road* along that road to the corner of *Grosvenor Park Road* was fifty yards, and the distance from that corner along *Grosvenor Park Road* to the new house was about the same distance or rather more.

6. After his removal the objector continued to

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occupy the residue of the garden which he had occupied when in his former house, which garden, however, did not in any part abut upon *Pembroke Road*, but was situate at the back of the houses in *Pembroke Road*. To this garden he obtained access by a back road in the wall of his new house. The door of communication from the old house to the garden was kept fastened after the new tenant took possession of the house, but it might have been opened if it had ever been required.

7. It did not appear that *Pembroke Road* was the name of any district in *Walthamstow*, or that any houses but those fronting to *Pembroke Road* were known as "*Pembroke Road*." *Grosvenor Park Road* was quite as well known as *Pembroke Road*.

8. After his removal the said *J. W. Calver* had received letters (some of which were produced in Court) which had been addressed to him at *Pembroke Road*, and especially he had received certain notices of objection, signed by him in the same manner as those above mentioned, which he had returned to him through the Dead Letter Office in consequence of the persons to whom they were addressed not having been found.

9. It was contended on behalf of the objector that no one could have been misled by his place of abode being given as *Pembroke Road* instead of *Grosvenor Park Road*, because the two houses were so close together that any person inquiring for him in *Pembroke Road* would have been at once told where to find him. It was also contended that the site of the house in *Grosvenor Park Road* having once formed part of a plot of land occupied with the house in

Pembroke Road, it could properly be described as *Pembroke Road*.

10. The Revising Barrister was of opinion that the case was undistinguishable from *Melbourne* v. *Greenfield* (*a*). He was satisfied, from the evidence of the objector, that in describing himself as of *Pembroke Road* he had intended to describe his former house, and not that to which he had removed; and he therefore thought, for the reasons given by *Erle*, C.J., in that case, that the 101st section of the Registration Act, 6 *Vict.* c. 18, was inapplicable. He also thought that the case was distinguishable from *Thackway* v. *Pilcher* (*b*) (which was quoted on behalf of the objector) or other similar cases, because in the present case the objector had not given, as in that case, a mere imperfect description of his abode by referring to some large district in some part of which it was really situate, but had given an incorrect description by referring to a particular place, *Pembroke Road*, where he did not reside at the time in question. He thought that the facts that the objector had removed a short distance only, and that the site of his new house had once formed part of the garden of the old, could not affect the principle laid down in *Melbourne* v. *Greenfield*, which he understood to be that an objector must actually describe his real abode, and that it is not sufficient for him to describe a place at which his real abode may be ascertained, however readily that might be done.

11. But for the case of *Melbourne* v. *Greenfield* he

(*a*) *Kea. & G.* 261; 7 *C.B., N.S.* 129; 29 *L. J. C. P.* 81.

(*b*) *Hopw. & Ph.* 378; *S. C., L. R.* 2 *C. P.* 100.

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would probably have held the notice good, as he did not think that any person so objected to could be practically inconvenienced by the mis-description. Being, however, of opinion that the case was in point, he was of course bound to follow it; and moreover, he thought that the said *Thomas Davis* (and the other persons objected to) might have been induced, by the law laid down in that case, to neglect the notice of objection they had received.

12. For the purposes of the case he found the following facts,—that the description of himself as of *Pembroke Road*, given by the objector, was intended as a description of the house mentioned as his place of abode on the register, and not of the house in which he really resided at the time of signing the notice; that it was not a description which anyone would think of giving of the new house, or which would be understood as applicable to the new house; and if the said *J. W. Calver* had been a stranger in the neighbourhood at the time he went to reside at No. 1, *Grosvenor Park Terrace, Grosvenor Park Road*, he could not have been found with reasonable facility by the description given of him as of *Pembroke Road*.

13. The Revising Barrister also found, however, that the said *J. W. Calver* not being a stranger in the neighbourhood, but well known in *Pembroke Road* by reason of his former residence there, he might, in fact, have been found by a party objected to without difficulty, because upon a personal inquiry in *Pembroke Road* the inquirer would either have been informed at once of the removal and be directed to the new house, or else have been directed first to the old house and thence to the new one, which was close by; while if

the inquiry had been made, not personally, but by letter addressed to *Pembroke Road*, the letter would have been delivered to the objector. Thus, although the objector had not described his true place of abode, he had given the information practically required for his identification by describing himself as of a place in the immediate neighbourhood of his abode, and at which it might readily have been ascertained.

14. For the reasons mentioned above, he considered that he ought to hold the notices of objection insufficient and he expressed an opinion to that effect, but understanding that a large number of persons had been objected to in the same form, with a view to facilitate an appeal from his decision, he reserved his formal decision as to retaining or expunging the name of the said *Thomas Davis* (who did not appear to prove his qualification), and adjourned the further consideration of the case, and also the Court at which the same came before him, from time to time, and from place to place, within the said division of the county, pursuant to the statute, in the meantime hearing and deciding upon the merits of the cases of all persons so objected to by the said *James William Calver*, who chose to appear before him in answer to the objection and prove their qualification.

15. At a Court held at the *Town Hall, Stratford*, within the said division by appointment for the revision of the lists of certain parishes and by adjournment of the Court held at *Brentwood*, and of other Courts, he finally decided to retain in the list the name of the said *Thomas Davis*, without requiring him to prove his qualification, on the ground that the said notices of objection were insufficient, and that he was

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not at liberty as a matter of law to take into consideration the facts stated in paragraph thirteen, in order to cure the defect disclosed by the fact stated in paragraph twelve.

16. The said *J. W. Calver* gave due notice of appeal against this decision.

17. The Revising Barrister at the same time decided for the above reasons to retain on the various lists, without proof of their qualifications, the names of all the persons contained in the schedule to the case, who had all been objected to by the said *J. W. Calver*, in the same form and under the same circumstances as above stated, and who all failed or declined to appear before him to prove their qualifications in answer to the said objections.

The question for the opinion of the Court was whether upon the facts stated above, the Revising Barrister was right in holding the said notices of objection to be bad on the ground above stated. If the Court decided that he was right, then all the names in the schedule were to remain on the register. If the Court decided that he was wrong, then the register was to be amended by expunging therefrom the names in the schedule.

E. Clarke for the appellant. The case refers to *Melbourne* v. *Greenfield* (*a*), which the Revising Barrister thought was binding upon him. No doubt that case was consistent with the previous decision in *Knowles* v. *Burking* (*b*), where in the case of a borough vote the majority of the Court held that the objector had

(*a*) *Kea. & Gr.* 261 ; 7 *C. B., N. S.* 129. (*b*) 1 *Lutw.* 461; 2 *C. B.* 226.

rightly given his true place of abode, as it was at the time of giving notice, instead of that appearing on the register, though *Maule*, J., differed and thought the latter should have been inserted.

In *Thackway* v. *Pilcher* (*a*), the objector had described his address as *No.* 1, *Argyle Place, Bartonsham*, and it appeared that *Bartonsham* was a large district built on what was formerly a farm of the same name, much more difficult, one would think, to find than the one here given, yet the Court held it was a question of fact for the Revising Barrister, and his finding was conclusive.

[WILLES, J. That case seems hardly in point for you, for the address was correctly given there, as far as it went.]

But *Erle*, C. J., prefers to the mere literal compliance with the Act, the wider ground of fact that the residence might easily be found.

[WILLES, J. Any one removing from *Eaton Square* to *Eaton Place*, and giving the old address might easily be found by inquiring at the old house or of the postman, but will that do ?]

Here there is the same land in occupation. The finding is in substance that the objector was occupying the same place.

[BRETT, J., referred to par. 12.]

Shield, for the respondents, was not called on.

(*a*) *Hopw. & Ph.* 378.

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WILLES, J. The learned counsel for the appellant has done all in his power to induce us, by a side wind to overrule the case of *Melbourne* v. *Greenfield*, which we, sitting as we do here, are unable to do, nor should we desire to do so if we could, after it has been so long decided. The statute says that the objector shall leave at the place of abode of the party objected to, a notice which is described in the schedule to the Act, and which is to contain the place of abode of the objector at the time when he objects. The objector has not here complied with the statute. He had ceased to live in the residence which he gave as his place of abode, and was living in another distinct and different. He had also let the former house, which he described himself as occupying. Moreover, the case finds that had he been a stranger in the place, he could not have been found by the address given, and it cannot be that a difference is to be made, because he happened to be well known in that particular locality. The description of his place of abode was intended by him to be the description of his place of abode as it appeared on the register, instead of his present residence, and the question is much the same as that discussed in *Knowles* v. *Brooking* (*a*) where, notwithstanding the dissentient opinon of *Maule*, J., the Court held the notice of objection sufficient, which was signed by the objector from his real place of abode, although not corresponding with that on the register. And the law was further pronounced in *Melbourne* v. *Greenfield*, that the objector should address from his actual place of abode, and not from that on the register. We see no reason why the Revising Barrister should have wished the case of

(*a*) 1 *Lutw.* 461; 2 *C. B.* 226.

Melbourne v. *Greenfield* to be overruled; and we think that he was quite right in following that case, rather than his own judgment, for it would have been impossible to say that a *sufficient* description of the right place of abode has been inserted.

In the notice of objection, the distinction seems to have been rightly apprehended in the report of *Thackway* v. *Pilcher* in *Hopwood & Philbrick*, where, in the head-note the word *sufficiently* is italicised as emphatic. In the note to that report, *Sheldon* v. *Flatcher* (*a*), is referred to as correctly stating, that whether a notice of objection describes on the face of it the objector's place of abode, is a question of law, whether such description gives sufficient information, is a question of fact for the Revising Barrister. For these reasons I think the decision was right.

KEATING, J., concurred.

BRETT, J.—It comes to this, that there was no description of the actual place of abode of the objector, though there was an accurate one of where he had lived. That has been decided not to be a compliance with the statute. The decision must be affirmed.

Shield applied for costs, the Revising Barrister's decision having been affirmed.

Per Curiam. Having regard to the fact that if the notice of objection had been good, the names of the voters would have been expunged for want of qualifi-

(*a*) 2 *Lutw.* 11.

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cation, we think, under the circumstances, the costs should be refused.

Decision affirmed without costs.

Attorneys—For Appellant, *R. T. Wragg*,
For Respondent, *Wyatt, Hoskins, & Hooker.*

SIMEY, Appellant; DIXON, Respondent.

Nov. 22.

A notice of objection to a person on the County Register stated that it was grounded on the third column, and related to the nature of the voter's interest.

Held, that under this ground of objection evidence was admissible that the qualification relied on was a house situated within, and so occupied by the voter, as to entitle him to vote for, the borough, and consequently, under 2 Wm. IV. c. 45, s. 29, to disentitle him for the county.

THE case stated:—

At a Court holden in Sunderland, on the 12th of *October* last, for the revision of the lists of persons entitled and claiming to be entitled to vote for a Knight or Knights of the shire for the northern division of *Durham*, the following name in the list of persons entitled to vote was objected to, that is to say:

Christian name, &c.	Place of abode.	Nature of qualification.	Street, &c., where the property is situate.
Cocken, William	*The Rectory, Bishopwear-mouth*	Freehold benefice	*Bishopwear-mouth Parish*

It appeared in evidence that this was the name of the rector of *Bishopwearmouth*, and that the qualification for which it was endeavoured to retain his name on the said list, was the parsonage house of the rectory to which he was entitled in respect of his benefice. It was proposed, on behalf of the objector, to prove that this house was situated within the parliamentary borough of *Sunderland*, and that it was and had been

occupied by the voter a sufficient time to entitle him to a borough vote. Exception was taken on behalf of the voter to the admissibility of the proposed evidence, on the ground that the notice of objection did not entitle the objector to go into this particular ground of objection. The notice of objection produced was in the form given by the 28 *Vict.*, c. 36, schedule A, No. 2, and specified the ground of objection in the following words, that is to say, "And I ground my objection on the 3rd column of the register, and the objection relates to the nature of your interest in the qualifying property."

The Revising Barrister was of opinion that, having reference to the 2 *Will.* 4, c. 45, s. 24, the said notice, in point of form and particulars, satisfied the 28 *Vict.* c. 36, for the purpose of the objector, and was sufficient, within the said statute to entitle the objector to give in evidence the above facts. He therefore admitted the evidence, and erased the name of the voter from the list.

The question for the Court was whether the said notice was sufficient within the 28 *Vict.* c. 36, to entitle the objector to give the above facts in evidence. If the Court should be of opinion in the affirmative, the register was to remain as it was; if in the negative, the said name was to be restored to the register.

Other appeals were consolidated.

Udall, for the appellant. The notice of objection being confined to the third column of the register, proof that the house, in respect of which it was sought to claim a county vote, was situated within the limits of the parliamentary borough was inadmissible.

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The 28 & 29 *Vict.* c. 36, s. 6, requires the grounds of objection to be specified in the notice. It is true this may be done by naming the column objected to, but here the wrong column was named. The objection should not have been made to the third column, but to the fourth. The third column deals only with the nature of the qualification, whereas the fourth deals with its local situation. And here the whole question is one of situation.

[BRETT, J. Suppose the statement in the fourth column had been "41, John Street," which was correct, would the objection still have been to the fourth column?]

It is submitted that it would not have been to the third. Specific grounds of objection being required by sect. 6, sect. 7 says expressly that "no person objected to, under the provisions of this Act, shall be required to give evidence before the Revising Barrister, in support of his right to be registered, otherwise than as such right shall be called in question in such ground or grounds of objection." In *Bennett* v. *Brumfitt* (a), the notice was held bad for not specifying the grounds of objection. Here the only objection being to the third column, the party objected to might simply have sent his deeds for the purpose of supporting his vote. Could he, under such circumstances, be deprived of his vote by the Revising Barrister, going into evidence as to where the qualifying property was situated?

WILLES, J. I am of opinion that the Revising

(a) *Ante*, p. 80; *L. R.*, 4 *C. P.* 407.

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Barrister's decision was correct. The only question is as to the sufficiency of the notice of objection. The qualification relied on, though stated to be a freehold benefice was limited before the Revising Barrister to the parsonage house of the rectory, which appears to be within the parliamentary borough of Sunderland, and in respect of which the voter's interest and occupation were such as to confer on him the borough vote. It follows, therefore, that under sect. 24 of the Reform Act the county franchise was properly denied to him, if the notice of objection was a sufficient notice. Now the notice of objection (which is required by 28 & 29 *Vict.* c. 36, s. 6) was in the following form: "I ground my objection on the third column of the register, and the objection relates to the nature of your interest in the qualifying property." That the objection here relied on could have been made to the fourth column is a notion which I must reject, since the statement in that column is sufficiently distinct, and not suggested to be incorrect; so that the objection, if it had been made to that column, would have been idle. On the other hand, the third column points to the nature of the voter's interest; and here it is a part of the nature of the interest which this rector has in his parsonage house, that he has a right in respect of it to vote for the borough, and not for the county. An objection which draws attention to the nature of the interest, seems a specific and pointed mode of drawing attention to the character of the evidence which it was in this case sought to rely on.

BYLES, J. I am of the same opinion. The notice of objection was to the third column, and although the

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Nov. 18.

Notwithstanding sec. 22 of 31 & 32 Vict. c. 58 (which enacts with reference to a parish forming part of more than one polling district, that "the part of such parish situate in each polling district shall be deemed to be a *separate parish* for the purposes of the revision of voters, and the lists, and register of voters"), it is sufficient for an objector to describe himself as on the Register of Voters for the parish without any mention of the polling district.

A county objector described himself as on the Register of Voters for the "township" of S. (S. having its own overseers, and being divided into two polling districts). *Held*, a sufficient description of the Register on which the objector's name was to be found.

Semble, that the above section is not restricted to the proceedings before the Reviser, but applies to all the steps to be taken by those charged with the duty of preparing the lists or revising them.

THE case stated:—

At a Court holden by the Revising Barrister for the south-eastern division of the county of *Lancaster*, *Samuel Stott*, of *Quarry Hill, Healey*, near *Rochdale*, objected to the name of *Enoch Beswick*.

The notice of objection to the person objected to was in the following form:—

To Mr. *Enoch Beswick*; of *Kemjon Lane*, *Tonge*.

Take notice that I object to your name being retained on the *Tonge* list of voters for the south-eastern division of the county of *Lancaster*.

Dated this 15th *August*, 1871.

(Signed) *Samuel Stott*, of *Quarry Hill, Healey*, near *Rochdale*, on the register of voters for the township of *Spotland*.

The township of *Spotland* consists of the hamlets of *Brandwood Higher End, Brandwood Lower End, Whitworth Higher End, Catley Lane, Chadwick, Clay Lane, Falinge, Healey, Whitworth Lower End, Wol-*

stenholme, and *Woodhouse Lane*. The first three named hamlets of *Brandwood Higher End*, *Brandwood Lower End*, and *Whitworth Higher End*, constituted the whole of *Brandwood Higher End* polling district, in the year 1871 and preceding year. The said other hamlets within the township of *Spotland* form part of, and are included in, the *Rochdale* polling district.

It was not proposed to be proved before the Revising Barrister that the said *Enoch Beswick* was entitled to have his name retained in the list of voters, in respect of the said qualification hereinbefore described; but on his behalf it was contended that the said notice of objection was invalid on the ground that it did not state the particular list of voters, in which the name of the said *Samuel Stott* appeared. The overseers of the township of *Spotland* prepare the list of voters of the whole township of *Spotland*, and they published, during the year 1871, within the *Brandwood Higher End* polling district, the names of all voters whose qualification was situate within such polling district; and they published, during the same year, within the polling district of *Rochdale*, the names of all voters whose qualification was situate within such part of the township of *Spotland* as was within such polling district of *Rochdale*.

Thus they published, during the year 1871, on or before the 1st *August*, within the *Brandwood Higher End* polling district, a document headed as follows:—

BRANDWOOD HIGHER END POLLING DISTRICT.

The register of persons entitled to vote at any election of a member or members of Parliament, for the division of south-east *Lan-*

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cashire, between the 31st December, 1870, and the 1st January, 1872.

Hamlets of *Brandwood Higher End*, *Brandwood Lower End*, and *Whitworth Higher End*, in the township of *Spotland*.

And the said overseers also published, during the year 1871, on or before the 1st *August*, within such part of the township of *Spotland* as lies in the *Rochdale* polling district, a document headed as follows:—

ROCHDALE POLLING DISTRICT.

The register of persons entitled to vote at any election of a member or members of Parliament for the division of south-east *Lancashire*, between the 31st December, 1870, and the 1st January, 1872.

The hamlets of *Catley Lane*, *Chadwick*, *Clay Lane*, *Falinge*, *Healey*, *Whitworth Lower End*, *Wolstenholme*, and *Woodhouse Lane*, in the township of *Spotland*.

The name of the objector appears only as follows on the last above-mentioned register of persons entitled to vote:—

Stott, Samuel	*Quarry Hill, Healey, near Rochdale*	Freehold house and land	*Quarry Hill*; tenants, *John Williamson and others*

It was contended before the Revising Barrister, on behalf of the persons objected to, that such notice of objection was invalid on the following grounds:—

First, that there was no list of voters described or distinguished by the name of "The register of voters for the township of *Spotland*." Secondly, that the list of voters whose qualifications were in the township of *Spotland*, were divided into two parts, one part consisting of the three townships constituting the *Brandwood Higher End* polling district; and the other part consisting of the eight townships above enumerated, and forming part of the *Rochdale* polling district. Thirdly, that the objector should have described the particular list of voters on which his name appeared, and not have given the name of a township, which formed part of two polling districts, and had two separate and distinct sets of lists.

The Revising Barrister considered that if the said notice of objection was according to the form numbered 5 in schedule A of the 6 & 7 *Vict.* c. 18, or to the like effect, as required by the 7th sect. of the said Act, it was good; and seeing that the only difference between the said notice of objection and the said form, was, that in the said notice it was "on the register of voters for the township of *Spotland*," and in the said form numbered 5, the words were "on the register of voters for the parish of ——," he considered that the said notice of objection was, under the circumstances of this case, to the like effect as the said form No. 5, and that it was not necessary to specify the particular list of voters, as was contended.

He, therefore, decided that the said notice of objection was valid, and struck off the name of the said *Enoch Beswick* from the said list of voters.

If the Court should be of opinion that the notice of objection was invalid, the names of *Beswick* and nine

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other persons, whose cases were consolidated, were to be restored to the respective lists.

Edwards, for the appellant. The notice of objection is bad. It is incumbent on the objector to state on what register his name is to be found. Here the objector describes himself as "on the register of voters for the township of *Spotland*;" but, in fact, there is no such register. The township is divided into two polling districts, viz., *The Rochdale Polling District*, and *The Brandwood Higher End Polling District*; and there is a separate register for each district. For each district the Clerk of the Peace issues separate precepts, and the overseers make out separate lists. In fact, for registration purposes they are, by virtue of 31 & 32 *Vict.* c. 58, s. 22, wholly separate and distinct. Before referring to that enactment, however, it may be as well to refer to sect. 34 of 30 & 31 *Vict.* c. 102, which empowers the County Justices at Quarter Sessions, if they think convenience requires it, to divide the county into polling districts; the object being to enable each voter to have a polling place near his residence. Then sect. 22 of 31 & 32 *Vict.* c. 58, enacts, that, "where any parish in a county, city, or borough, forms part of more than one polling district, the part of such parish situate in each polling district *shall be deemed to be a separate parish for the purposes of the revision of voters and the lists and register of voters*, and may be designated by some distinguishing addition in the list of voters for such part of a parish." Substituting "township" for "parish," in that enactment (since *Spotland* township has its own overseers of the poor), we have, as applied to *Spotland*, an express enactment that the parts of the township in each polling district

are for the purposes, which the section specifies, to be deemed separate townships. That language, cannot, it is submitted, be restricted to the purposes of the revision before the Revising Barrister, but must extend to *all* the purposes of registration and revision. The words are not merely "the revision of voters," but also "the lists and register of voters."

[BRETT, J. But for sect. 22 of 31 & 32 *Vict.* c. 58, do you admit that the notice would be good?]

That may be so, since the notice follows the Forms in the Registration Acts, viz. No. 5 Schedule A of 6 *Vict.* c. 18, and No. 2 Schedule A of 28 *Vict.* c. 36, in both of which the words are "A. B. of [*place of abode*] on the register of voters of the parish of ——."

[WILLES, J. Is there anything under the old law to prevent a parish extending into more than one district?]

The 2 *Will.* 4, c. 45, s. 63, provided for the division of counties into polling districts, such districts to be settled and appointed by the Boundary Act, (2 *Will.* 4, c. 64.)

[COLLIER, J. Under that Boundary Act instances will be found of parts of parishes being put into a county, or into the parliamentary division of a county.]

Here the objector should have described himself as "on the register for the township of *Spotland, Roch-*

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dale Polling District," or "for the *Rochdale* Polling District of the township of *Spotland*." Suppose the appellant had gone to a church door in the *Brandwood Higher End* polling district, he would have failed to find the name of the objector there.

[KEATING, J. As regards the case of boroughs the 30 & 31 *Vict.* c. 102, s. 34, subs. 2, says, that "where any parish in a borough is divided into, or forms part of more than one polling district, the overseers shall, so far as practicable, make out the list of voters in such manner as to divide the names in conformity with each polling district." Where that direction is followed, there would be no need to go to more than one church in order to find out who the objector is.]

That provision is limited to the case of boroughs.

[BRETT, J. But sect. 22 of 31 & 32 *Vict.* c. 58, applies to boroughs as well as counties.]

Therefore, in boroughs as well as counties, the polling district must be specified. *Quoad* the registration, the overseers are, in cases like the present, virtually overseers of the polling district.

[BRETT, J. You contend that the overseers and the objector must specify the polling district. Do you say that a claimant must do so also?]

Perhaps not. On referring to the form of claim it will be seen that the only requirement in this respect is, that it should be directed to the overseers of the

parish or township. *Allen* v. *Geddes, Town Clerk of Warrington* (*a*), is not in point. There it was found as a fact that the description contained in the words "on the list of voters for *Golborne Street*" would be commonly understood to indicate the list on which the objector's name appeared. Here, there being a list for each polling district, no one could understand from the notice of objection which list was intended. He referred, also, to *Edsworth* v. *Farrer* (*b*), and 6 *Vict.* c. 18, s. 22.

No one appeared on behalf of the respondents.

WILLES, J. I am inclined to think that the Revising Barrister was right, and that the notice of objection was valid. We start with this, that the notice follows the statutory form. The form given in the Registration Act (6 & 7 *Vict.* c. 18), is No. 5, Sched. A, for which, where the person objected to is on the register, form No. 2, Sched. A, of 28 & 29 *Vict.* c. 36, has since been substituted. Now, in the present case, the objector describes himself as "on the register of voters for the township of *Spotland.*" And, although "township" is not the word in the form but "parish," it is clear that it may be read "township" here; so that the form, which we must remember is not merely a form in a schedule, but one which an Act of Parliament has said shall be sufficient, has been precisely followed.

The next proposition is, that there is no subsequent enactment, by which the form so prescribed has been repealed. Mr. Edwards has ingeniously argued that it

(*a*) *Ante*, p. 413; *S. C., L. R.*, 5 *C. P.* 291.

(*b*) 1 *Lutw.* 517; *S. C.*, 4 *C. B.* 9.

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is repealed by implication, and has relied on the effect of certain subsequent enactments with reference to the creation of polling districts, the operation of which, as he contends, is to expunge and abolish the township of *Spotland* for the purposes of registration, just as if it had never existed. He has argued that the objector should describe himself as on the register, not "for the township of *Spotland*," but for that portion of the township of *Spotland* which is in the polling district to which he belongs. The argument, as regards polling districts, was launched by a reference to sect. 34 of 30 & 31 *Vict.* c. 102; but, to view the subject consistently, it is necessary to go back earlier to the provisions of the Reform Act (2 *Will.* 4, c. 45). Under the Registration Act (6 *Vict.* c. 18), as has been already stated, the ecclesiastical division is observed in the form of the notices of objection, the objector being required to state in respect of what parish or township his name is to be found on the register. But, on turning to the Reform Act it is certainly remarkable to find that there is nothing there to lead us to the conclusion that the boundaries of polling districts were necessarily to be conterminous with boundaries of parishes. The 63rd section makes provision for the division of counties into convenient polling districts, to be settled and appointed under the Boundary Act (2 & 3 *Will.* 4, c. 64); and sect. 64, while providing for the erection of polling booths in each district, and the allotment thereto of "several parishes, townships, and places," speaks of "place" as distinct from "parish" and "township." For instances where *part* only of a parish has been attributed to a county, or to a parliamentary division of a county, my brother Collier has referred

us to the Boundary Act; and as regards polling districts, also, it would certainly appear from the enactments on the subject to be the case, that there was nothing legally impossible in one part of a parish being attributed to one polling district, and another part to another.

I now come to sect. 34 of "The Representation of the People Act, 1867," by which the justices of the peace at quarter sessions are empowered to divide the county into polling districts, and are to advertise a description of the districts so constituted—a description which need not necessarily have reference to townships or parishes, but might in some cases, perhaps, conveniently be by streets. If that had stood alone, it might have been more convenient that claims to the franchise should be made with reference to such districts; but there is no enactment to that effect. It is also proper to observe that by 31 & 32 *Vict.* c. 58, s. 6, provision is made for the printing of the lists in such a way "that the list of any parish or township, or all the lists of any polling district, may be had separately;" (*a*) and, consequently, if that provision were carried out, there could be no difficulty in getting at the list for the whole township, and finding out who the objector is.

I come now to sect. 22 of the 31 & 32 *Vict.* c. 58, on which section the argument has been based. Sect. 22 enacts that "where any parish in a county, city, or borough forms part of more than one polling district, *the part of such parish situate in each polling district shall be deemed to be a separate parish for the purposes*

(*a*) This section has reference to the revision in the year 1868, but 6 *Vict.* c. 18, s. 47 has a similar provision.

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of the revision of voters, and the lists and register of voters, and may be designated by some distinguishing addition in the list of voters for such part of a parish." Now, unquestionably, that section does not in express terms repeal the forms which the Legislature had previously sanctioned. The question is, does it do so by necessary implication, so as to render an objector's description of himself as "on the register of voters for the parish of ——" insufficient where the parish in question forms part of more than one polling district, and to render it incumbent on the objector to describe himself as on the register of voters for the particular district as well as for the particular parish. I think it does not. It says, no doubt, that "the part of such parish situate in each polling district shall be deemed to be a separate parish" for certain purposes. What, then, are the purposes? They are, "the revision of voters and the list and register of voters"—words which may be satisfied by confining them, as I think they should be confined, to the revision by the Revising Barrister, and the preparation for it by those officers whose duty it is to prepare the lists for revision. Now a claimant (for the remark applies equally to claimants and objectors) is not a reviser. His right is simply to intervene, and to call on those who are concerned with the revision of the lists to make certain corrections. So, again, of the objector. The objector is not a reviser; although, no doubt, he aids and assists in the operation of revision. I think, therefore, that so far as claims and objections are concerned, there is no ground for saying that the forms previously in existence have been repealed in this instance, and that if this is to be done, it must be by the Legislature. I think

the decision of the Revising Barrister should be affirmed.

KEATING, J. I am of the same opinion, and on the short ground to which my brother Willes has last adverted. The objector has given his notice in a form which an Act of Parliament has prescribed, and declared shall be sufficient. Mr. Edwards has ably contended that by reason of the division of the township of *Spotland* into two polling districts, and of the provision in sect. 22 of the 31 & 32 *Vict.* c. 58, a form, which previously was admittedly sufficient, has ceased to be so. And the words which he relies on in support of his argument are:—"The part of such parish in each polling district shall be deemed to be a separate parish for the purposes of the revision of voters, and the lists and register of voters." If that clause created any such inconsistency as to lead to the conclusion that the forms previously prescribed by statute were by necessary implication repealed, there would, no doubt, be much in the argument. But I fail to see any such necessary inconsistency, nor do I see any difficulty in excepting from the operation of that clause the forms relating to claims and objections. Whether or not the clause could be confined to the proceedings before the Revising Barrister (and I own I am disposed to think it could not), the words do not appear to me necessarily to include the repeal contended for. And I think we ought to be extremely careful in drawing the conclusion that an enactment has been repealed by implication, especially when dealing with the case of persons not necessarily skilled in construing Acts of

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Parliament, who have followed the plain words of a previously existing enactment. I think the notice was sufficient, and the decision right.

BRETT, J. But for sect. 22 of 31 & 32 Vict. c. 58, I should have thought Mr. Edwards had not even a plausible ground of argument, since the notice follows the form given by the previous statutes. The question then is, does sect. 22 affect the sufficiency of that form? I at first thought that sect. 22 must be construed in one of two ways, either as applicable to every step in the registration, from the beginning to the end, or else as confined to the revision by the Barrister. Either construction involves a difficulty. The former would necessitate the alteration of every step from the commencement, beginning with the precept of the Clerk of the Peace to the overseers, and affecting all the existing enactments on the subject. The latter would involve this—that, although every step might be taken in accordance with the forms hitherto in existence, yet when the lists came before the Revising Barrister, it would be his duty to make a division in the best way he could, and to ascertain on which polling district list each name should be placed. I think, though not without some doubt, that an intermediate interpretation may be adopted, and that the words "for the purposes of the revision of voters and the lists and register of voters" may mean, for the purposes of all such acts, ministerial or judicial, as are done by those responsible for the revision of voters directly for the purposes of revision. The act of claiming or objecting is not such an act, and if not, sect. 22 is inapplicable.

COLLIER, J. I agree. And I think it sufficient to say that the words "for the purposes of the revision, &c.," do not necessarily include a notice of objection, at least, not so necessarily as to effect the repeal of a previous enactment under which the notice before us was sufficient.

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Attorneys—For Appellant, *Horne & Hunter*, agents for *Blain & Chorlton*.

MOGER, Appellant; ESCOTT, Respondent.

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1872. *Feb.* 9.

The proviso in sec. 28 of the Reform Act, 1832, as to the payment of rates, in cases of successive occupation under that Act, applies also to successive occupation under the Representation of the People Act, 1867.

Held, therefore, that a claim in respect of successive occupation under the Act of 1867 was valid where the rates had been paid, although as regards the second house, the claimant was not rated, and the payment of rates had been made by the landlord under his agreement with the claimant.

THE case stated:—

At a Court held by the Revising Barrister for the city and borough of Bath, *Thomas Moger* claimed to have his name inserted in the list of voters for the said city and borough.

Thomas Moger's name appeared upon the list of claimants for the parish of *St. James*, as an occupier of houses in immediate succession from one to the other in the following form:—

Moger, Thomas	7, *Taylor's Court, Bath*	Houses in succession	7, *Taylor's Court*, from 13, *Paradise Street, Lyncombe and Widcombe*

The facts proved before the Revising Barrister were that *Thomas Moger*, up to *February*, 1871, and for a long time previous, had occupied a house in *Paradise Street*, in the said city and borough, for which he paid

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an annual rent of £6, and was duly rated to all rates made for the relief of the poor during the time of his occupation, and had paid all rates payable by him in respect of the premises so occupied by him. That in the month of *February*, 1871, he removed direct into and occupied a house in *Taylor's Court*, in the said city and borough, for which he agreed to pay an annual rent of £8, his landlord agreeing, at the same time, to pay the rates. In the month of *April*, in the same year, a rate was duly made for the relief of the poor of the parish, in which the said house in *Taylor's Court* is situate, in which rate the name of *Thomas Moger* did not appear, nor did *Thomas Moger* make any claim to have his name placed upon the rate-book, nor were any circumstances shown which would enable him to avail himself of the benefit of the 19th section of "the Poor Rate Assessment and Collection Act, 1869;" but all rates payable in respect of the premises occupied by him, were, previous to the 20th day of July, 1871, paid by his landlord.

It was contended on behalf of *Thomas Moger*, that since by the 59th section of the "Representation of the People Act, 1867," this Act, so far as is consistent with the tenor thereof, should be construed as one with the enactments for the time being in force relating to the Representation of the People and with the Registration Acts, in all cases of successive occupation, so referred to in the 26th section of the same Act, although the annual value of the premises occupied be under £10, the right to be registered depends not upon the occupier having been rated in respect of the premises occupied by him during the time of such occupation, as required by the 3rd section

of the same Act, but upon the fact that all poor rates which shall have become payable from him, have been actually paid, as in the case of the successive occupation of houses of the annual value of £10, under the 28th section of the 2 *Will.* 4, c. 45.

The Revising Barrister was of a different opinion, and disallowed the claim of *Thomas Moger*, on the ground that he had not been rated, had not claimed to be rated, and was not within the operation of the 19th section of the "Poor Rate Assessment and Collection Act, 1869."

If the Court should be of opinion that this was wrong, then the Register was to be amended, and *Thomas Moger's* name was to be inserted in the list of voters for the said city and borough of *Bath*.

[Other appeals were consolidated].

T. W. Saunders, for the appellant. The question is whether under the "Representation of the People Act, 1867," where the claim is in respect of the successive occupation of dwelling-houses, it is essential to the acquisition of the franchise that the claimant should have been rated in respect of the second house. Under 2 *Will.* 4, c. 45, it has been decided not to be so (*Rogers* v. *Lewis*) (*a*); and it is submitted that the same rule must prevail under the more recent Act. The sections of the "Representation of the People Act, 1867," material to this inquiry, are ss. 3 and 26. Sect. 26 enacts, that "different premises occupied in immediate succession by any person as owner or tenant during the twelve calendar months next previous to

(*a*) *K. & G.* 279; *S. C.*, 7 *C. B., N. S.* 29.

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the last day of July, in any year, *shall*, unless and except as herein is otherwise provided, *have the same effect in qualifying* such person to vote for a county or borough, *as a continued occupation* of the same premises *in the manner herein provided.*" That section says nothing in terms as regards rating, and it is submitted that it only deals with that to which it in terms relates, *viz.*, "occupation," and that its effect is to require the same character of occupation where the occupation is successive, as sect. 3 requires where the occupation is continuous. The occupation which qualifies under the "Representation of the People Act, 1867," differs widely from that under the Reform Act. Under the Reform Act a person might occupy by his goods, and his occupation might be joint. Under the "Representation of the People Act, 1867," the occupation must be personal, and joint occupancy is forbidden. Even assuming the rating clauses in sect. 3 would, but for sect. 59, be applicable, sect. 59, by incorporating the proviso in sect. 28 of the Reform Act, prevents their application, and the reasoning in *Rogers* v. *Lewis* (*a*) is precisely in point. As to the payment of the rates for the second house, no question is raised; and, at all events, the rates have, in fact, been paid under an agreement with the landlord.

Gorst, for the respondent. That the question here raised arises under the "Representation of the People Act, 1867," is not denied. Nor could it be, since the subject of occupation is admittedly in value under £10. The question then must turn on ss. 3 and 26 of that Act. Reading ss. 3 and 26 together, the effect

(*a*) *K. & G.* 279; *S. C.*, 7 *C. B., N. S.* 29.

is the same as if in sect. 3 the word dwelling-house were read "dwelling-houses in succession." Substituting those words in sect. 3, we find an express provision (as much applicable to "dwelling-houses in succession," as to a "dwelling-house"), that the occupier must have been rated during the time of his occupation. By the terms of sect. 26, successive occupation is to have the same effect in qualifying as "continued occupation *in the manner herein* (*i.e.*, in the 'Representation of the People Act, 1867,') *provided*." One incident of the *manner* of occupation therein provided is, that the person should have been rated. Sect. 59 of the "Representation of the People Act, 1867," which has been relied on *contra*, does not affect the case. That section only provides that the Reform Act and the "Representation of the People Act, 1867," are to be read together, so far as is consistent with the tenor of the later Act; and does not therefore, deal with the case of the two being inconsistent. And similarly the saving of the provisions of former Acts by the Act of 1867, is not absolute, but only subject to the provisions of the saving Act.

Saunders in reply.

Cur. ad. vult.

The judgment of the Court (*a*) was now (Feb. 9, 1872) delivered by BRETT, J. In this case *Thomas Moger* claimed to have his name inserted in the list of voters for the city and borough of Bath.

His name appeared upon the list of claimants as an occupier of a house, 7, *Taylor's Court*, in immediate succession to his occupation of a house, 13, *Paradise*

(*a*) *Willes*, J., *Byles*, J., and *Brett*, J.

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Street. It was proved that the claimant had occupied 13, *Paradise Street* for a long time previous to, and up to February, 1871, at a rent of £6 per annum, and that he was duly rated to all poor rates made during the time of such occupation, and had paid all rates payable by him in respect of the premises, during such occupation. In *February*, 1871, the claimant moved direct into, and occupied 7, *Taylor's Court*, for which he agreed to pay an annual rent of £8, his landlord agreeing to pay the rates. A poor rate was made in *April*, 1871, in which the claimant's name did not appear; he did not claim to be rated; he was not entitled to the benefit of sect. 19 of the "Poor Rate Assessment and Collection Act, 1869;" but all rates payable in respect of 7, *Taylor's Court* were, previous to the 20th of *July*, 1871, paid by his landlord.

The Revising Barrister disallowed the claim. It was contended, on behalf of the claimant, that this decision was erroneous; that it was not necessary that the claimant should be rated in respect of the second house, if he paid all rates payable in respect of it; that he had, by the hands of his landlord, paid all such rates. It was contended, on behalf of the respondent, that according to sections 3 and 26 of the "Representation of the People Act, 1867," it was necessary, in order to entitle the claimant to be registered, that he should not only have paid all rates payable in respect of the second house held in immediate succession, but that he should also have been rated to such rates; and, further, that the claimant had not paid in this case the rates payable in respect of the second house.

As to the first point, inasmuch as both houses

occupied by the claimant were below the annual value of £10, the question is, whether sect. 26 of the Act of 1867 deprives the occupier of a house in immediate succession within the year, and which house is of a less value than £10 a year, of the privilege contained in the proviso to section 28 of 2 *Will.* 4, c. 44, as interpreted in *Rogers* v. *Lewis* (*a*).

According to that proviso, as interpreted by that case, it is sufficient for such an occupier to have paid all rates due in respect of the second house, though he be not rated in respect of such house, if he has been rated in respect of, and has paid all rates due in respect of the first house. Now, by sect. 3 of the Act of 1867, the inhabitant occupier of a dwelling-house, in order to entitle himself to be registered, must have occupied *it*, *i. e.*, the one dwelling-house, for twelve months, &c., and must have been rated in respect of it, and must have paid all rates payable in respect of it. Section 26 deals with one only of these conditions, namely, that of the occupation, and enacts that the occupation of different premises in immediate succession shall have the same effect as a continual occupation of the same premises. There are added the words, "in the manner herein provided." These words might, at first sight, seem to refer to an occupation accompanied by a being rated and a payment of rates. But these conditions are not the manner of occupation; they are other conditions required to be fulfilled when the claimant has satisfied the condition as to occupation. These words seem to refer to the necessity of a separate, as distinguished from a joint occupier. Sect. 26, therefore, does not interfere with any obliga-

(*a*) *K. & G.* 279; *S. C.*, 7 *C. B., N. S.* 29.

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tion, or any privilege, attaching to the questions of being rated, and of the payment of rates.

Those obligations and privileges are regulated by other enactments. By sects. 3 and 26, if there were no other enactments applicable, it would seem that the occupier of two houses in immediate succession, claiming to be registered in virtue of the qualification contained in the Act of 1867 must have been rated, and must have paid the rates in respect of both houses. But by sects. 56 and 59 of the Act of 1867, the proviso in sect. 28 of the 2 *Will.* 4, c. 45, is applicable to the case of houses occupied in immediate succession, according to the Act of 1867, unless it be inconsistent with sect. 26 of the new Act.

According to the interpretation we have given to sect. 26 of the new Act with reference to sect. 3 of the same, there is no inconsistency between it and the proviso to sect. 28 of the old Act. It follows that the proviso is applicable to the cases of occupation in immediate succession under the new Act; and that in such cases the occupier may be registered, if he has been rated, and has paid all rates in respect of the first house, and has paid all rates payable in respect of the second house, though he has not been rated in respect of it. The reason given in *Rogers* v. *Lewis* for the distinction between the first and second houses is as applicable in the cases of successive occupation under the new as under the old Act.

The second point is whether the claimant can be said to have paid the rates payable in respect of the second house. He has not paid them with his own hand. He has not been released from payment, nor can he be deemed to have paid by virtue of the

"Poor Rate Assessment and Collection Act, 1869." The question is whether without recourse to that, or any other statute, he can be said to have legally paid the rates. We are of opinion that it can properly be said that he has legally paid the rates. By virtue of the agreement between him and his landlord, the actual payment of the rates by the landlord in this case is a legal payment by the tenant (*Cook* v. *Luckett*) (*a*). We are of opinion in the result that the claimant was entitled to be registered, and that the decision of the Revising Barrister was wrong, and must be reversed, and the claimant's name must be inserted in the register.

Decision reversed.

Attorneys—For Appellant, *Rogerson & Ford*, agents for *John Ricketts*.
For Respondent, *Maule & Robertson*.

FIRTH AND ANOTHER, Appellants; OVERSEERS OF WIDDICOMBE IN THE MOOR, Respondents.

Nov. 18.

A notice of claim by a £12 occupier (stating "land as occupier" as the nature of qualification) was sent to the overseers on the 25th of August. By mistake it followed the county instead of the borough form of claim. *Held*, nevertheless, that the borough form (as applied by 31 & 32 Vict. c. 58, s. 17, and 6 & 7 Vict. c. 18, s. 15, to £12 occupiers) was sufficiently complied with.

THE case stated:—

At a Court held by the Revising Barrister for the eastern division of the county of *Devon*, *Frederick Hand Firth* claimed to have his name inserted in the list of £12 occupiers for the parish of *Widdicombe in the Moor*.

(*a*) 1 *Lutw.* 432; *S. C.*, 2 *C. B.* 168.

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Robert Ford Tucker duly objected to his name being so inserted.

It was proved that the said *F. H. Firth* had, on the 29th day of *August*, 1871, sent to the overseers of the said parish a notice of claim in the words and figures following :—

NOTICE OF CLAIM.

To the overseers of the parish of *Widdicombe in the Moor.*

I hereby give you notice that I claim to be inserted in the list of voters for the division of *East Devonshire*, and that the particulars of my place of abode and qualification are stated in the column below.

Dated the 25th day of *August*, in the year 1871.

(Signed) *F. H. Firth.*

Frederick Hand Firth	*Great Cator*	Land as occupier	*Great Cator*

It was proved to the Revising Barrister that the said *F. H. Firth* was entitled on the 31st day of *July*, last past, to have his name inserted in the said list in respect of the qualification described in the said notice of claim, and that the land occupied by him was of the value of more than £50 a year.

There was no evidence that any list of persons claiming to have their names inserted in the said list of £12 occupiers had been published by the overseers of the said parish.

It was contended by the said objector that the notice was insufficient, because it did not show in what list the said *F. H. Firth* claimed to have his name inserted.

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It was contended by the said *F. H. Firth*, that the notice was to the like effect as the form of notice given by 6 *Vict.* c. 18, Sched. B, No. 6, and that the date at which the notice was sent to the overseers sufficiently indicated the list in which he desired his name to be inserted.

The Revising Barrister held that, the Legislature having by 6 *Vict.* c. 18, s. 4, appointed a form in which persons should claim to be placed on the register of voters for a county, and by 31 & 32 *Vict.* c. 58, s. 17, taken in conjunction with 6 *Vict.* c. 18, s. 15, having expressly appointed a different form in which persons should claim to be placed on the list of £12 occupiers, the first form was not applicable to a claim to be placed on the list of £12 occupiers, but that a notice of claim to be placed on such list, should show on its face that it was a claim to be placed on that list, and not a claim to be placed on the register sent in too late.

He, therefore, refused to insert the name of *F. H. Firth* in the said list.

William Avery claimed to have his name inserted in the said list, under precisely similar circumstances.

The Revising Barrister refused to insert his name in the list on the same ground.

The appeals were consolidated.

The question for the opinion of the Court was whether the said notices of claim were sufficient.

If the Court was of opinion that the said notices were sufficient, then the said list was to be amended by inserting the names.

If of a contrary opinion the said list was to remain unaltered.

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G. Lewis for the appellants. The Revising Barrister has refused to place the claimant on the list of £12 occupiers, on the ground that the claim did not show on its face that it was a claim to be placed on that list. But that it was, in fact, such a claim will be presumed. The time for claiming to be put on any other list had gone by, so that the £12 list was the only one to which the claim *could* relate. On similar grounds, in *Lambert* v. *The Overseers of St. Thomas, New Sarum* (*a*), a notice of objection was upheld. There, although the notice of objection did not follow the form in the statute, it was upheld as being to the like effect with that form, there being but one list to which the notice could have been intended to relate. The objection that the claim does not, on its face, state to what list it refers may, however, be answered by the remark that there is no necessity it should do so. No such formality is imposed by any statute. The form, which should have been, and which as is submitted, has been, substantially followed, is No. 6, Schedule B, to 6 *Vict.* c. 18. The 6 *Vict.* c. 18, s. 15, having rendered that form, or one to the like effect, a sufficient form of claim in boroughs, the 31 & 32 *Vict.* c. 58, s. 17, has extended it (with the necessary variations) to claims by £12 occupiers in counties. It is true the Revising Barrister has held here that the notice of claim was not to the like effect with Form No. 6 in Schedule B. But in that it is submitted he was wrong.

No one appeared on behalf of the respondents.

WILLES, J. I am of opinion that the notice of

(*a*) 2 *Lutw.* 222; *S. C.*, 12 *C B.* 642.

claim was not open to the objection which was taken, and that the decision of the Revising Barrister was wrong. The decision seems to have proceeded on the notion that a £12 occupier, who, at the time when he sends in his claim, can only claim as such occupier, and who describes his qualification "land as occupier," fails to give sufficient information to the overseers to enable them to put his name on the proper list.

After carefully searching the statutes, I am unable to find anything which applies, except sect. 17 of 31 & 32 *Vict.* c. 58, which refers us back to 6 & 7 *Vict.* c. 18, s. 15, nor do I find anything there which renders it incumbent on a claimant to state in his notice to the overseers on which list he claims to be put. If, indeed, it were necessary, I think that under the circumstances of this case the notice might be construed as relating to the particular list. But my judgment does not proceed on that, but on the ground that there is no such requirement in the statute either directly or by inference.

The Act which imposes on overseers the duty of making out a list of £12 occupiers in counties, is the 30 & 31 *Vict.* c. 102. The 15th section of 6 & 7 *Vict.* c. 18, which deals with claims by persons omitted from the borough lists, is, by 31 & 32 *Vict.* c. 58, s. 17, rendered applicable with the necessary variations to the £12 occupier lists in counties. For boroughs two forms are provided, Nos. 6 and 7 in Schedule B. Now, if we take No. 6, as the proper precedent (bearing in mind that the analogy rather than the precise form there given is to be adhered to), Form No. 6 has, in my judgment, been sufficiently followed. But even if reading No. 6 as a claim in respect of property, and

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No. 7 as a claim other than in respect of property, viz., as a freeman, we thence infer an indication (though I think it would be an over-refinement) that the particular list should be pointed out by the claimant, I think that here he has done so sufficiently. There is a substantial compliance with Form No. 6; and, although, from the difference between counties and boroughs, an exact compliance is not possible, everything really essential is given by this notice. I think the decision should be reversed.

KEATING, J. I am of the same opinion. In boroughs it is the duty of the overseers to make out the lists, all persons omitted by them having a right to claim, and, if qualified, to be inserted therein. In counties, before "The Representation of the People Act, 1867," all persons not on the register had to send in claims. That Act, having created the £12 occupation franchise, imposed on overseers in counties a new duty (similar to that which had previously existed in boroughs) of making out a £12 occupation list. Doubts, however, having been entertained as to claims by persons omitted from such list, sect. 17 of 31 & 32 *Vict.* c. 58, was passed, enabling persons so omitted to claim in the same way, as nearly as circumstances admit, as claimants in boroughs. In boroughs, a claim might be made either as occupier or as freeman; but a claimant was not, as appears from Form No. 6, Sched. B, bound to state in his notice that he claimed as occupier, because that was sufficiently indicated by his not claiming as a freeman. Thus the claim in No. 6, Schedule B, is simply a claim for insertion in the list "of persons entitled to vote," whereas that in

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No. 7 is for insertion in the list "of persons entitled as freemen to vote;" so that a freeman must claim specifically. The Revising Barrister appears to have thought, reading 31 & 32 *Vict.* c. 58, s. 17 in connection with 6 *Vict.* c. 18, s. 15, that the claimant ought to specify in his notice, that he claimed to be put on the £12 occupation list. Such a provision, if it existed, would seem almost useless, because one fails to see on what other list the claimant could be put. Like my brother *Willes*, however, I have looked through the statutes, but without being able to find any such obligation. That was the only point reserved, and the decision on it was, in my judgment, wrong, and should be reversed.

BRETT, J. The point raised is whether, assuming the qualification sufficiently described (for as to that no objection was raised), the notice ought to show in addition on what list the claimant claimed to be put. In counties the practice, as regulated by 6 & 7 *Vict.* c. 18, was that the overseers first gave notice, and then claims in the Form No. 2, Schedule A, were sent in. In boroughs, the overseers made out a list, and persons omitted therefrom had to send in to the overseers claims in Form No. 6, Sechdule B; or, if omitted from the list of freemen, to the town clerk, in Form No. 7, Schedule B. When, under "The Representation of the People Act, 1867," the £12 occupation franchise was introduced in counties, the Legislature, adopting the mode of regulating the lists hitherto in force only in boroughs, required the overseers to make out a list of persons entitled in respect of such occupation; and persons omitted from such list had (by 31 & 32 *Vict.*

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c. 58, s. 17; and 6 & 7 *Vict.* c. 18, s. 15), to give notice of their claims in the same mode as persons omitted from the lists in boroughs.

The Revising Barrister in deciding this case observes "that the Legislature having, by 6 *Vict.* c. 18, s. 4, appointed a form in which persons should claim to be placed on the register," and "by 31 & 32 *Vict.* c. 58, s. 17, taken in conjunction with 6 *Vict.* c. 18, s. 15," "a different form, in which persons should claim to be placed on the list of £12 occupiers." So much, in a sense, is true, for the form (to be followed as nearly as possible) is not No. 2, Schedule A, but No. 6, Schedule B. He then proceeds to draw this consequence, viz., "that the first form," *i. e.*, No. 2, Schedule A, "is not applicable to a claim to be placed on the list of £12 occupiers, but that a notice of claim to be placed on such list should show, *on its face*, that it is a claim to be placed on that list, &c."

The consequence which the Revising Barrister thus draws from his premises appears to me erroneous, for in the language of the Legislature I can see no such obligation as he there states. He has, I think, failed to observe that for the purposes of this case (taking 31 & 32 *Vict.* c. 58, s. 17, in conjunction with 6 & 7 *Vict.* c. 18, s. 15), Form No. 2, Schedule A, and No. 6, Schedule B are substantially the same; and, consequently, that the latter form has been sufficiently followed. I think we ought not to engraft on the language of the Legislature an obligation such as he has here sought to impose.

COLLIER, J. The 31 & 32 *Vict.* c. 58, s. 17, enacts that the 15th section of 6 & 7 *Vict.* c. 18, shall apply

to the list of £12 occupiers in counties; but when we turn to the latter Act, we find that the forms there given are not precisely applicable, but should be applied, as nearly as possible. The notice appears to me in substantial accordance with Form No. 6, Schedule B, and therefore sufficient.

Decision reversed.

Attorneys for Appellants, *Coode, Kingdon & Cotton*, for *Daw & Son*, Exeter.

BUCKLEY, Appellant; WRIGLEY, Respondent.

Nov. 21.

A sum of money voluntarily laid out by landlords in improving their property is not a "charge" to be deducted in ascertaining the net annual value for the purpose of the franchise.

Tenants in common in *fee* of houses and land, expended of their own accord £21 19*s.* 1*d.* in laying on a supply of water for the convenience of their tenants. For this an additional rent was charged, but if the whole outlay were deducted in the year of qualification, the annual value would not have been sufficient for each landlord to have a freehold of 40*s.* *Held*, that such deduction should not be made.

THE case stated:—

This was an appeal from the decision of the Revising Barrister for the southern division of the *West Riding of Yorkshire.*

The names of the appellant and forty-seven other persons were in the list of voters for the southern division of the *West Riding of Yorkshire*, for qualifications described as "share of freehold houses and lands" in the township of *Saddleworth*, called *Valley Cottages, Woodend*, near *Mossley*, and the said appellant and forty-seven other persons were duly objected to as not being entitled to have their names retained in the said list of voters.

The conveyance of the property was in fee-simple, and dated in *January*, 1870, and was to *Robert Shaw Buckley* and another, in trust for themselves and forty-

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six other persons (including the appellant) in forty-eight equal undivided shares as tenants in common.

The gross annual rental at the date of the conveyance, and thenceforward up to *June*, 1871, was £141 14*s.* 4*d.*; but for the year between the 31st of *July*, 1870, and the 31st of *July*, 1871, the gross annual rental was £143 2*s.* 10*d.*, the increased rent of £1 8*s.* 6*d.* being occasioned by the bringing into the dwelling-houses a supply of water from the *Ashton-under-Lyne, Staleybridge*, and *Dukinfield Waterworks*, and such bringing in of water was a convenience to the tenants, who were charged in respect of it an increased rent, and the increase of rent took place in *June*, 1871, when such water supply commenced. Thus the gross annual rental of the property during the year between the 31st of *July*, 1870, and the 31st of *July*, 1871, was £141 14*s.* 4*d.* plus £1 8*s.* 6*d.* (the increase of rent obtained between *June*, 1871, and the 31st of *July*, 1871), equal to £143 2*s.* 10*d.*

The houses were managed by an agent, who was paid by commission, which the Revising Barrister found to be necessary, and who expended, during the year between the 31st of *July*, 1870, and the 31st of *July*, 1871, in repairs and otherwise, in respect of the houses in question the following amounts, which the Revising Barrister held, in the absence of any other evidence, to be necessary expenses, and proper to be deducted from the gross annual rental.

	£	*s.*	*d.*
Chief rent	4	11	6
Right of way.	1	10	0
Carried forward. . .	6	1	6

	£	s.	d.
Brought forward . .	6	1	6
Repairs	26	15	0
Commisssion	7	1	8
Expended for laying on water for use of tenants of the houses. .	21	19	1
Total	£61	17	3

which, being deducted from £143 2*s.* 10*d.*, the gross annual rent, left a net annual rental of £81 5*s.* 7*d.* The latter sum, being equally divided among the forty-eight tenants in common, left a less sum than 40*s.* annual value to each.

Upon this the Revising Barrister disallowed the votes of the appellant, and of the other forty-seven tenants in common, whose names were appended to the schedule annexed thereto. In all other respects the appellant and the forty-seven other persons were duly qualified.

The appeal of the said *Jesse Edward Buckley*, and of the said other persons, depended upon the same decision and were consolidated. If the Revising Barrister was wrong in deducting the sum of £21 19*s.* 1*d.* from the gross rental, for the purpose of estimating the annual value, then the vote of the appellant was to be allowed, and his name, and the names of the said other persons in the schedule thereto, were to remain in the list of voters for the southern division of the *West Riding of Yorkshire* in respect of the said qualification. If right, then, the votes were to be disallowed.

C. Bowen, for the appellant. The landlords were in no way *bound* to lay on the water supply. Their doing

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so was a voluntary act on their part to improve the property, and to increase its annual value.

[BRETT, J. Does not the Revising Barrister hold it to be *necessary*, to command the increased rent?]

It is surely not just in respect of that which increases the value for all succeeding years to deduct the whole from the rental of one year. It is true the Revising Barrister calls it necessary, but can his saying so make that necessary which evidently is not so? This is not a "charge" or "reprise" within the meaning of the statute, 8 H. 6., c. 7, as expounded in *Rolleston* v. *Cope* (*a*), per *Willes*, J.:—'First, the land must be freehold, to the annual value of 40*s*., at the least, above all charges, in the original *outre les reprises*, a term never applied, that I can find, to a payment which redounds to the permanent benefit of the owner of the land."

The Court called on

Pickering, Q.C. (*Monckton* with him), for the respondent. The Revising Barrister was right, for this is not a question of law but of fact, which it was for him to decide, and which he has decided, for he finds this expense to be *necessary*. The Court will not reverse his finding, unless it entertains a clear opinion that he was wrong.

It is contended, on the other side, that the payment is a voluntary one. So, in a sense, is an expenditure in repairs. A landlord may repair, or refuse to repair,

(*a*) *Ante*, p. 488. *L. R.*, 6 *C. P.* 301.

a house, but if the Revising Barrister finds it to be a necessary expenditure to command the rent, it ceases to be voluntary. In *Hamilton* v. *Bass* (*a*), the question of repairs and their effect upon the annual value of property was considered. It was there held that such expenses should be deducted from the annual value.

Maule, J., in the argument, suggests—"If a man occupies a piece of ground which is worth more than 40*s.* a year to him, **because he grows corn upon it,** which sells for more than 40*s.*, surely the expenses of cultivation must be taken into the account. Manuring land, for the purpose of renewing its productive powers is analogous to repairing a house."

[WILLES, J. Are we to take the word "necessary" to mean that the owners were *obliged* to pay? If that be conclusive, what question is there for the Court?]

It is contended there is none; that the question is one of fact, and is concluded by the finding.

In *Moorhouse* v. *Gilbertson* (*b*), it was decided that the votes were rightly disallowed, because the rent was reduced by the payment of a water rate and a local Board of Health rate, which the landlords had undertaken and bound themselves to pay.

[WILLES, J. They had to pay the rates in order to keep their tenants.]

It is submitted, such is the case here, that the

(*a*) 2 *Lutw.* 213; *S. C.* 12 *C. B.* 631.
(*b*) 2 *Lutw.* 260; *S. C.* 14 *C. B.* 70.

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Revising Barrister means that without this expenditure it would not be possible to secure the *old* rent.

In *Coogan* v. *Luckett* (*a*), it was held to be a question of fact for the Barrister, what was the clear yearly value of premises. *Erle*, J. suggested there that "the fair principle to be adopted was to inquire what the premises would let for to a tenant, and deduct therefrom what a tenant would ordinarily have to pay."

In *Sherlock* v. *Steward* (*b*), the Revising Barrister found that a payment of commission for collection of the rent (which reduced the yearly value below 40*s*.) was *necessary* from the nature of the property; and the Court held the vote to be rightly disallowed, feeling itself bound by the finding of the case, though several of the judges in terms declared it was voluntary with a landlord to have a collector or not as he pleased.

Bowen was not called on to reply.

KEATING, J. I am of opinion that the Revising Barrrister was wrong, and that the votes in question should have been allowed. If I could have adopted the argument of Mr. *Pickering* that the Revising Barrister had found as a fact that the expenditure in question was necessary to obtain the rent essential to qualify, I should think there might be some ground for his contention that the vote should be disallowed. But on reading the case, and considering the facts set forth, it is plain that was not so, but that the laying on of a supply of water to the houses was a great

(*a*) 1 *Lutw.* 447; 2 *C. B.* 182.

(*b*) *Kea. & G.* 286; 7 *C. B., N. S.* 21.

convenience to the tenants, in consideration of which they were willing to pay an additional rent. It is clear that what is meant is, that the expenditure was necessary to secure the *improved* rent, and not the rent *essential* to qualify. If the Revising Barrister had intended what is attributed to him, one would expect that he would say so in plain words, and he has not.

In holding the Revising Barrister to be wrong, we do not at all conflict with the case of *Sherlock* v. *Steward* (*a*). There it was found as a fact that the expense of collection was, *from the nature of the property, necessary* to obtain the essential rent. Without such a finding, it could not have been maintained that the expense of collection was, in all cases, to be deducted from the annual value.

My brother *Willes*, who has been obliged to leave the Court, authorised me to say that he entirely concurred in the opinion I have just expressed.

BRETT, J. The question turns upon the construction to be put on the language of the case. If the Revising Barrister meant to say that the expenditure was necessary to produce an amount of rent which would give each of the tenants in common 40*s.* a year above all charges, the case would come within *Sherlock* v. *Steward*, and the votes could not be supported. But if he meant that, though a rent of £141 14*s.* 4*d.* could be obtained from the premises without the expenditure, the increased rent or value of £143 2*s.* 10*d.* could not, the votes ought to be allowed.

It is clear to me that the laying on of the water

(*a*) *Kea. & Gr.* 286; 7 *C. B., N. S.* 21.

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supply was simply a convenience and luxury for the comfort of the tenants. It was such an improvement to the property as a room added to a house would be, and the capital expended in procuring it should clearly not be deducted in any one year to ascertain the annual value.

Decision reversed, without costs.

Attorneys—For Appellant, *Rickards & Walker.*
For Respondent, *Baxter, Rose, Norton & Co.*

FORD, Appellant; BOON, Respondent.

Nov. 18.

"House" is a sufficient description of the nature of a claimant's qualification as occupier of a house, although the borough where the vote is claimed is one in which the rights of freeholders are reserved under 2 *Will. IV.* c. 45, s. 31.

So *Held*, in the case of Exeter.

Held also that, if necessary, the Reviser had power under sec. 40 of 6 & 7 Vict. c. 18, to amend by inserting the claimant in the list of voters as "occupier of a house."

APPEAL from the decision of the Revising Barrister for the city of *Exeter.*

The case stated:—At a Court held before the said Revising Barrister, *Robert Saunders Gannicliffe* claimed to have his name inserted in the occupiers' list for the parish of *St. David, Exeter*, and his claim was duly objected to.

It was proved to the satisfaction of the Revising Barrister, that the claimant sent to the overseers of the said parish, between the 1st and 26th of *August*, a notice of claim in the words and figures following:—

NOTICE OF CLAIM.

To the Overseers of the Parish of *St. David.*

I hereby give you notice that I claim to have my name inserted in the list made by you of persons

entitled to vote in the election of members for the city of *Exeter*, and that the particulars of my qualification and place of abode are stated in the columns below.

Dated the 21st *August*, 1871.

Christian name and surname of the claimant at full length.	Place of Abode.	Nature of Qualification.	Street, lane or other like place in the parish, where the property is situate, and number of the house (if any), when the right depends on property.
Robert Saunders Gannicliffe.	*St. David's Hill.*	House.	*St. David's Hill.*

Signed *R. S. Gannicliffe.*

It was proved to the satisfaction of the Revising Barrister that the overseers duly published a list of persons claiming to have their names inserted in the lists as required by 6 *Vict.* c. 18, s. 15, in which the names and qualification of the claimants appear precisely as they are set forth in their respective notices of claim.

It was also similarly proved that the said claimant was, on the 31st of *July* last, entitled to have his name inserted in the said list in respect of the occupation of a house, in the said parish, of the clear yearly value of not less than £10.

Exeter is a city and county of itself, having reserved rights of voting as freeholders and freemen, under 2 *Will.* 4, c. 45, and therefore persons possessing freehold property are entitled to vote for the said city, and the overseers of each parish make out two lists,

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one consisting of persons entitled as occupiers, and the other of persons entitled by virtue of other rights, except as freemen, which, after being revised by the Revising Barrister, are amalgamated into one list by the town clerk, forming the register of voters for the city.

It was contended on the part of the objector that though the claimant had followed the form in the schedule prescribed by the Act, he had insufficiently filled it up, inserting only the qualification, and not the nature of it also; and that therefore the notice of claim was insufficient; that the word "house" did not express any qualification known to the law; and there was no indication of the list in which the said *Robert Saunders Gannicliffe* claimed to have his name inserted, or whether he claimed to be entitled to vote as owner of a freehold house or as occupier of a house.

It was further contended that the Revising Barrister had no power to amend the notice of claim under 6 *Vict.* c. 18, s. 40, by inserting the words "occupation of"—1. Because that would be giving a qualification, and not merely more accurately defining one already given, "house" being no qualification at all. 2. Because the said section only applied to the lists which the Revising Barrister had to revise, and not to the list of claimants, or any notices, and no alteration of the published list of claimants could enable the Revising Barrister to hold that the claimant had duly claimed. as required by 6 *Vict.* c. 18, s. 38, before the Revising Barrister could insert his name in the said list.

On the part of the said claimant it was contended: 1. That the notice of claim being in the form given by

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the Act (6 *Vict.* c. 18), it was sufficient, although it did not expressly state on which list the said *Robert Saunders Gannicliffe* claimed to be placed. 2. That the nature of the said claimant's qualification was sufficiently indicated by the notice of claim. 3. That section 40 did enable the Revising Barrister, if necessary, to amend the list of claimants, and that the claim was good: *Barlow* v. *Mumford* (*a*), and the cases therein referred to. 4. That any description of the nature of the qualification in the notice of claim, which, if it had appeared in the overseers' list, the Revising Barrister should have corrected into a correct description, was sufficient: *Eaden* v. *Cooper* (*b*); and that in an occupiers' list, even if "house" were insufficient to designate the qualification, as being ambiguous, and not stating whether it meant "freehold house" or house as occupier, yet it might be more clearly defined according to the qualification, which it was proved to have been intended to mean, if the information was supplied to the Revising Barrister. The Revising Barrister held, 1. That the form of the notice was sufficient, being that given by the Act, and no one being required, in fact, to place his name upon either list till the case came before the Revising Barrister. 2. That the description of the nature of the qualification in a notice of claim was sufficient, if it was such that the Revising Barrister should (if it had appeared upon an overseers' list or a register for a county) have amended it under 6 *Vict.* c. 18, s. 40, into a correct description, and that "house" was a description which the Revising Barrister would have

(*a*) *Hopw. & Philb.* 335; *S. C.*, *Law Rep.* 2 *C. P.* 81.

(*b*) 2 *Lutw.* 183; 11 *C. B.* 213.

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been justified in amending into "occupier of a house" under such circumstances. 3. Though the Revising Barrister was of opinion that 6 *Vict.* c. 18, s. 40, did not apply, for the reason relied on by the objector, the Revising Barrister held that he was bound by the authority of *Barlow* v. *Mumford* to hold that it did so apply, and he was satisfied that if he had the power of amendment he ought to use it. He therefore held that the notice of claim was sufficient, and inserted the name of the said *Robert Saunders Gannicliffe* in the said list of occupiers.

The objector appealed from this decision.

The question for the opinion of the Court was whether the said *Robert Saunders Gannicliffe* duly claimed to be placed upon the said list, the Revising Barrister having made such amendment, if any were necessary, as he had power to do.

If the Court should be of opinion in the negative, the names of the said *Robert Saunders Gannicliffe* and the other persons mentioned in the schedule to this case, were to be erased from the said list.

Kingdon, Q.C., for the appellant. The Revising Barrister appears to have held, on the authority of *Barlow* v. *Mumford* (*a*), that a notice of claim was amendable. But that, it is submitted, is not so: *Eaden* v. *Cooper* (*b*). *Maule*, J., there said, "All that the Barrister has to do is to inquire whether the claimant has given due notice, and for that purpose he can only look at the notice which has been given. What is the use, then, of *amending* the claim? If it contains a

(*a*) *Hopw. & Philb.* 335; *S. C.*, *L. R.*, 2 *C. P.* 81.

(*b*) 2 *Lutw.* 183, 187; *S. C.*, 11 *C. B.* 18, 25.

description of the qualification, which is not perfectly accurate, the Barrister has to consider whether the description given amounts to due notice." In *Barlow* v. *Mumford* (*a*), the objection was never taken that a notice of claim was not amendable.

[WILLES, J. That case did not turn on any question of amending a *claim*. What the Court did there was to hold the Revising Barrister justified in inserting the number of the house (the subject of qualification) in the *list*, on its being supplied by evidence, as appears by the report in *Hopwood & Philbrick*.]

The substantial question then is, first, whether "house," is a good description, where, as in *Exeter*, the "house" qualification may be enjoyed, either as occupier, or as owner of a "freehold house;" and, secondly, whether, if it be not good as it stands, the list could, nevertheless, be amended by inserting the claimant as the "occupier of a house." Both these questions must, it is submitted, be answered in the negative.

Where, as in the present case, a material part of the description of the qualification is omitted, that, it is submitted, is a fatal objection to the franchise, and one that is unamendable: *Bartlett* v. *Gibbs* (*b*). *Tindal*, C.J., there said, "As the whole object of the notice would be defeated if the omission of any part of such qualification could be remedied at the Court of Revision, we are of opinion that the addition of the premises in *West Street* to the qualification inserted in the list, would be a change in the description of the

(*a*) *Hopw. & Philb.* 335; *S. C.*, *L. R.*, 2 *C. P.* 81.

(*b*) 1 *Lutw.* 91; *S. C.*, 5 *M. & G.* 97.

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qualification, not warranted by the provisions of the 40th section. And, in a note to the report of that case by *Manning & Granger*, we find the following observations:—"The 40th section relates to two classes of defects only. The first class consists of cases in which there is a *total omission* of 'the Christian name, *or the nature of the qualification*, or the local or other description of the property.' Here the omission of 'the nature of the qualification' was not total. The second class embraces cases of *insufficiency* of description 'for the purpose of being identified.' Here the description, such as it is, was sufficient for the purpose of identification. The defect was, not *total omission or misdescription*, either of which might have been amended, it was a case of *partial omission*, which is unamendable." In *Daniel* v. *Camplin* (*a*), *Erle*, J., said, that in counties the list must state whether the voter was freeholder or tenant, or occupier, assigning as a reason for that observation that in counties it was not necessary that the voter should be an *occupier* of the premises in respect of which he is entitled to vote. In the case of a borough like *Exeter*, where freeholders' rights are reserved, similar reasoning is applicable. In *Howitt* v. *Stephens* (*b*), *Williams*, J. (as reported in 5 *C. B., N. S.*, p. 38), said, that the 40th section did not apply "to cases where there is a total omission to state some part of the description of the qualification, which is an essential foundation of the claim." "Land" would not be a sufficient description in the case of the county franchise, neither is "house" sufficient here; though, of course, in the case of an ordinary borough

(*a*) 1 *Lutw.* 273; *S. C.*, 7 *M. & G.* 180.

(*b*) See same case, *K. & G.* 198.

it would be entirely different. The objector is entitled to know beforehand what qualification he will have to rebut, and whether or not he can dispute it. Here he has no means of ascertaining whether the qualification intended to be set up is that of a freeholder, or an occupier, until he comes before the Revising Barrister. As regards the case of *Townshend* v. *The Overseers of St. Marylebone* (*a*), that, it is submitted, was not a case of partial omission. Moreover, in the judgment of one at least of the judges, reliance was placed on the ground that where there was a dwelling-house, in fact, the description "dwelling-house" described more aptly the "house" franchise under the Act of 1832 than the dwelling-house *inhabitancy* franchise, under the Act of 1867.

Lopes, Q.C., appeared on behalf of the respondent, but was not called upon.

WILLES, J. I am of opinion that the decision of the Revising Barrister was right. I do not, however, concur in his doubts as to the case of *Barlow* v. *Mumford* (*b*) being properly decided. It was not the notice of claim, but the list founded thereon, which was in that case amended, and sect. 40 applies to the list, though not to the notice of claim.

In the present case, the amendment, if indeed necessary, was in my judgment rightly made, since the objection (if any) was to the sufficiency of the description, and the object of the amendment was to define it more accurately.

The circumstance out of which the present objection

(*a*) *Ante*, p. 606; *S. C.*, *L. R.*, 7 *C. P.* 143.

(*b*) *Hopw. & Phill.* 335; *S. C.*, *L. R.*, 2 *C. P.* 81.

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arises is, that *Exeter* is a city and county of itself, in which the right of voting as burgage tenant (see *Littleton*, sect. 162) or freeholder is reserved by the Reform Act, 1832, so that the occupier of a house there, if of £10 value, might vote under sect. 27, or, if it were a freehold, in respect of which the right of voting was reserved, under sect. 31. If it were not for that circumstance the present claim would be clearly sufficient, as is shown by *Hitchins* v. *Brown* (*a*). There the description in the third column was simply "house," yet no one ever thought that "house" would not have been a sufficient description of the qualification, if the qualification had not consisted of more houses than one. Moreover, the Court considered there that there was no necessity for the Revising Barrister to have amended, as he did, by altering, "house" into "houses occupied in immediate succession." I think that in the same way here "house" was a sufficient description, but that, if it was not, it was on account of an insufficiency of description, which was amendable under sect. 40 of 6 *Vict.* c. 18, and has here been amended.

I am further fully prepared to go the length of what was laid down yesterday in *Townshend* v. *The Overseers of St. Marylebone* (*b*), (which must now be accepted as law), that if there be a description which would be sufficient in the case of a £10 house, under the Reform Act, 1832, and which happens also to fall under some other head of qualification, as, for instance, "dwelling-house," under the Representation of the People Act, 1867, the proof may be either in respect of the *genus* house, under the Act of 1832, or the *species* "dwelling-

(*a*) 1 *Lutw.* 328; *S. C.*, 2 *C. B.* 25.

(*b*) *Ante*, p. 606; *S. C.*, *L. R.*, 7 *C. P.* 143.

house," under the Act of 1867. The head of qualification is, in both cases, the same, but certain specially favourable conditions attach in the case of a dwelling-house. Similarly I should be disposed to hold that in a place like *Exeter*, where the claim is in respect of a "house," the proof may either be of a house of £10 annual value, or of a freehold, in respect of which the right is reserved by the Reform Act. I desire, however, to put this rather by way of explanation than by way of decision. Here the claim was in respect of a "house," and the proof adduced was the occupation of a house of £10 yearly value. I think the decision of the Revising Barrister was correct.

KEATING, J. I am of the same opinion. The claim made was in respect of a "house," and in the list which the overseers are directed by the town clerk to make out and publish, and which comes before the Revising Barrister, it is so stated. Mr. *Kingdon* does not deny that, in an ordinary borough, "house" would be a good claim; but he says that it ceases to be so here, because *Exeter* is a county of a city where freeholders, as well as occupiers, are entitled to vote. And he, therefore, calls upon us to decide, that the Revising Barrister should have disallowed the claim, because it contained no such description of the qualification as would confer a title to vote, or rather, that there was in it a latent ambiguity in not stating whether the claim was made as an occupier or as a freeholder. The case, however, appears to me to be brought within the principle of our decision of yesterday, in *Townshend* v. *The Overseers of St. Marylebone* (*a*), where we held that "dwelling

(*a*) *Ante*, p. 606; *S. C.*, *L. R.*, 7 *C. P.* 143.

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house," being a sufficient description of a "house" within sect. 27 of the Reform Act, 1832, did not cease to be so on the passing of "The Representation of the People Act, 1867." Similarly here, the description is admittedly sufficient, under the ordinary circumstances of borough representation, and the particular circumstances of this borough do not, in my opinion, render it less so. I think the claimant was entitled, under this claim, to give proof of a house of £10 annual value, but if, for the purpose of clearer definition, an amendment of the list was necessary, I think that under sect. 40 of 6 & 7 *Vict.* c. 18, the Revising Barrister had clear power of amendment.

BRETT, J. As to the formal point, I entertain no doubt that what the Revising Barrister has power to amend is not the notice of claim, but the description in the list which is founded on it.

As regards the substantial question, I own that, but for our decision yesterday in *Townshend* v. *The Overseers of St. Marylebone* (*a*), I should entertain considerable doubt. In *Exeter* there exist two different qualifications in respect of houses—the one in respect of occupation, the other in respect of ownership. The claimant, in his claim, described his qualification simply as "house." Mr. *Kingdon* has argued that that description is not merely insufficient, but that its insufficiency consists in its leaving out a material part of the qualification. And he has forcibly urged that it places the objector in a difficulty, to which he ought not to be subjected, viz., that of having to meet a case

(*a*) *Ante*, p. 606; *S. C.*, *L. R.*, 7 *C. P.* 143.

capable of being put in two ways, without knowing in which of the two ways it will be put. In support of that argument, he has cited the judgments of *Erle*, J., in *Daniel* v. *Camplin* (*a*), and of *Williams*, J., in *Howitt* v. *Stephens* (*b*), and but for the case of *Townshend* v. *The Overseers of St. Marylebone* (*c*), I should have thought the argument one of weight. The question is, however, how is that case to be dealt with? In that case, the qualification having been described as a dwelling-house, it was sought to establish it by proof of the joint occupation of a house of the value required by 2 *Will.* 4, c. 45. In answer, it was argued, as it has been here, that to allow such proof would be to throw a difficulty in the way of the objector, who would come prepared to meet a different case, viz., that of the "dwelling-house" franchise, conferred by "The Representation of the People Act, 1867." The decision, however, there, as I understand it, was, not that "dwelling-house" did not describe the qualification of an inhabitant occupier, under the Act of 1867, but that, assuming it did, it also described a qualification under the Act of 1832. That decision, therefore, appears to me to negative Mr. *Kingdon's* argument, since the Court declined there to yield to the suggestion that the objector was prejudiced. Accepting the opinion of the majority of the Court in that case as binding on me here, I am of opinion that it governs the present case.

COLLIER, J. I agree, and am of opinion, that our

(*a*) 1 *Lutw.* 273; *S. C.*, 7 *M. & G.* 180.

(*b*) *K. & G.* 198; *S. C.*, 5 *C. B., N. S.* 38.

(*c*) *Ante*, p. 606; *S. C.*, *L. R.*, 7 *C. P.* 143.

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decision in *Townshend* v. *The Overseers of St. Marylebone* (*a*) governs the present case. In that case, we decided that a description, which described a good qualification under "The Reform Act, 1832," did not cease to be sufficient because it also described a good qualification under "The Representation of the People Act, 1867." In answer to the argument there used, that "dwelling-house" was a description which must necessarily be referred to the Act of 1867, I no doubt observed that in one respect it was not a complete description under that Act, since it omitted to mention inhabitancy; but it was not on that ground that my judgment proceeded.

Here, if any amendment was necessary, which I do not think, it could clearly be made under sect. 40 of the Registration Act.

Attorneys—For Appellant, *J. E. Fox.*
For Respondent, *G. E. Philbrick*, for *Sanders, Burch, & Barnes, Exeter.*

Nov. 22.

The county franchise conferred by the occupation of lands of £12 rateable value is not restricted to lands held under one landlord, nor is it any objection that being detached they are separately rated.

HUCKLE, Appellant; PIPER, Respondent.

THE case stated,—

At a Court held the 4th day of *October*, 1871, at *Biggleswade*, in the county of *Bedford*, before the Barrister appointed to revise the list of voters in the election of knights of the shire for the county of *Bedford*, the name of *Henry Jeeves* was duly objected to, which name appeared on the list of persons entitled to vote for the said county in respect of the occupation as owner or tenant of lands or tenements within the

(*a*) *Ante*, p. 606; *S. C., L. R.*, 7 *C. P.* 143.

parish of *Sandy*, of the rateable value of £12 or upwards.

Christian name and surname of each voter at full length.	Place of abode.	Nature of qualification.	Street, lane, &c.
Jeeves, Henry	*Sandy*	£12 rateable value	*North Croft*

It was proved that *Henry Jeeves*, being of full age, and not subject to any legal incapacity, had occupied, for a sufficient time, on the 31st day of *July* last, as tenant, lands and tenements in the parish of *Sandy*, under four separate and distinct landlords, being separate and distinct owners of the respective lands and tenements, and for which said lands and tenements the said *Henry Jeeves* was separately assessed to the poor-rates in the said parish in the sums following, that is to say, £5 10*s.*, £1, £2 12*s.* 9*d.*, and £5 12*s* 6*d.* That the lands and tenements comprised in such four several and distinct occupations were properly and fully assessed to the said poor-rates, in the said parish, at such respective sums as aforesaid. That during the time of such respective occupations the said *Henry Jeeves* had been rated for the several premises so respectively occupied by him to all the rates made for the relief of the poor in respect of the said premises, and had paid all rates in respect of the said premises respectively. It was objected that the name of the said *Henry Jeeves* could not be retained on the said list, inasmuch as the said *Henry Jeeves* was not separately assessed to the poor-rate of the said parish in respect of a separate occupation of premises of the

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rateable value of £12 and upwards, and was not the occupier of premises under one landlord of the rateable value of £12 and upwards, and that the four separate assessments of premises held by the said *Henry Jeeves*, under different landlords, in the said sums of £5 10*s.*, £1, £2 12*s.* 9*d.*, and £5 12*s.* 6*d.*, which, when taken together, make an aggregate sum of £14 15*s.* 3*d.*, were not a sufficient qualification, under the 6th section of "The Representation of the People Act, 1867," to enable the Revising Barrister to retain his name on the said list.

The Revising Barrister held that the qualification was sufficient, and retained the name of the said *Henry Jeeves* on the said list. If the Court should be of opinion that the qualification as proved was insufficient, the name was to be struck out of the said list.

Other appeals were consolidated.

Bulwer, Q.C., for the appellant. The vote is claimed under 30 & 31 *Vict.* c. 102, s. 6; and the question arises under sub-sections 2 and 3, whether, in order to come within the scope of that section, the occupation must not be an occupation under one landlord, and the rating one rating in respect of the entire premises. Under sect. 30 of the same Act, the overseers are required to make out a list of the persons entitled under sect. 6, in the same manner, and subject to the same regulations, in and subject to which overseers in boroughs are required to make out the list of the £10 occupiers. That list is made out under 6 & 7 *Vict.* c. 18, s. 3; and by sect. 59 of 30 & 31 *Vict.* c. 102, the two Acts are to be read as one. Unless the Court

should think that the scope of sect. 30 is limited entirely to procedure, it is submitted that as under 2 *Will.* 4, c. 45, s. 27, the £10 occupier must hold all the premises, for which he claims the franchise, under one landlord, a similar restriction should be imported into sect. 6 of 30 & 31 *Vict.* c. 102, since in each case the list is to be made out subject to the same regulations. *Gadsby* v. *Barrow* (*a*) was a decision under 2 *Will.* 4, c. 45, s. 20, with reference to the case of a £50 occupier in a county, and there again the Court decided that the occupation, which under that section conferred the franchise, must be an occupation under one landlord.

Shield, for the respondent, was not called upon.

WILLES, J. I am of opinion that the Revising Barrister was right, and that the case is brought distinctly within the words of 30 & 31 *Vict.* c. 102, s. 6, and that the language of both the 2nd and 3rd sub-sections is satisfied. In the words of sub-section 2, the respondent did occupy during the required period, his occupation was in the character of tenant, and the lands which he occupied were within the county, and of the rateable value of £12 and upwards. It is true that the lands were in four separate portions, and separately rated; but, as regards the rateable value, from the findings in the case it seems admitted that that was above £12, so that, unless it can be said that the rating in respect of each portion of the premises was not a rating of the whole so as to satisfy sub-

(*a*) 1 *Lutw.* 142; *S. C.*, 7 *M. & G.* 21.

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section 3, the question resolves itself into one of addition.

The case of *Gadsby* v. *Barrow* (*a*) has been relied on as applicable, and it has been argued that unity of holding is indicated by sub-section 2, and unity of rating by sub-section 3. *Gadsby* v. *Barrow* (*a*) was a case depending on 2 *Will.* 4, c. 45, s. 20. That section, after dealing with two cases with reference to the lessee or assignee of a term, viz., when created for 60 years at one value, or when for 20 years at another, proceeds to the case of an occupation as tenant at *a yearly rent* of £50. The latter clause, therefore, following as it does two others, which both clearly relate to a single tenancy, it was rightly held, in *Gadsby* v. *Barrow* (*a*), that by *a yearly rent* was meant rent in respect of one holding, and that it was not satisfied by distinct rents issuing out of separate portions of land held under different landlords. Here, however, the word is *value*, and different considerations arise. *Value* may be made up of the several items of which the whole is compounded, and I am at a loss to see any ground for the contention that unity of holding is here requisite.

The 3rd sub-section raises a different question, viz., whether, as the premises occupied are in distinct portions, and separately rated, it can be said that there has been in respect of them no rating of the respondent within the meaning of that sub-section. I think, however, that it would be straining the language employed, relating as it does to the rating of the *person*, to hold that he has not been rated in respect of the premises, because he has not been rated by one rating in respect of the whole premises.

(*a*) 1 *Lutw.* 142; *S. C.*, 7 *M. & G.* 21.

For the reasons I have stated, I think *Gadsby* v. *Barrow* (a) inapplicable, and in the case of house and land, under sect. 27 of the Reform Act, 1832, we find that, where the restriction to a holding under one landlord was intended, it has been expressly stated. As to the argument derived from sect. 30 of the 30 & 31 *Vict.* c. 102, that merely relates to procedure, and cannot be meant to create a condition for the limitation of the franchise.

BYLES, J. Two objections were raised before the Revising Barrister. First, that the respondent was not separately assessed to the poor-rate in respect of a separate occupation of premises of the rateable value of £12. For that, however, I see no necessity, since I can see no reason why the aggregate amount should not be made up by adding together the rateable value of several holdings, though separately assessed.

The second objection was, that the occupation was not under one landlord; but as to that, where the Legislature has thought it necessary, it has taken care to express it.

BRETT, J. It has always appeared to me desirable that these Acts of Parliament should be construed as nearly as possible in accordance with the words used, whether the interpretation told in favour of the franchise or against it. Here, as I understand the case, we are to take it as a fact that the rateable value was above £12, so that the only objection is that the lands occupied by the tenant were occupied by him under

(a) 1 *Lutw.* 142; *S. C.*, 7 *M. & G.* 21.

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different landlords. If, then, we are to construe sect. 6 of 30 & 31 *Vict.* c. 102, according to the words used the case is brought distinctly within the terms of that section. It is urged, however, that we ought not to do so, but that we are to import into this section, as an incident of the qualification which it creates, something which under the Reform Act, 1832, was an incident of the borough qualification. We have, therefore, to consider what is the subject-matter with which sect. 27 of the Act of 1832 deals. It is a "house, warehouse, counting-house, shop, or other building, being either separately or *jointly with any land* within such . . . . borough occupied therewith by him as owner, or *occupied therewith by him as tenant under the same landlord.*" "House" "with land occupied therewith," must therefore, under that section, be occupied by a tenant, "as tenant under the same landlord." But the same remark does not apply to a "house" *simpliciter*, which may be occupied by the tenant as tenant under several landlords. Since, then, we find the suggested restriction not incident to every qualification under sect. 27 of the earlier Act, there seems no reason for importing it into sect. 6 of the later Act. Apart, however, from that consideration, I think the language of sect. 6 is not such as to justify the introduction of the suggested restriction.

Decision affirmed.

Attorneys—For Appellant, *Williams & James*, for *Wilkinsons & Butler, St. Neots.*
For Respondent, *Saunders*, for *Whyley & Piper, Cambridge.*

WADMORE, Appellant; DEAR, Respondent.

WADMORE, Appellant; THE OVERSEERS OF PUTNEY, Respondents (*a*).

THE case stated,—

Nov. 21.

The statute 12 *Geo.* 1, c. 36, passed for building a bridge from

At a Court holden at *Hammersmith*, in the county of *Middlesex*, on Tuesday, the 10th day of

F. to *P.* Sect. 1 appointed commissioners with powers for that purpose. Sect. 5 empowered bodies corporate and others, to convey necessary land to them. Sect. 7 gave authority to incorporate them, with power to purchase, hold, and sell land.

The commissioners were never incorporated.

Sect. 10 vested pontage or toll in them. Sect. 13 empowered them to mortgage the tolls and grant annuities, which sect. 14 declared should be personal estate. Sect. 16 authorised them to deepen the river. Sect. 17 vested all stones, bricks, and materials in them.

The statute 1 *Geo.* 2, c. 18, empowered the commissioner to agree with any persons to build the bridge, and to grant annuities in fee out of tolls to be deemed personal estate.

Sect. 3 empowered the commissioners to convey and assign the tolls or revenues unto persons contracting to build and keep the bridge in repair.

Sect. 5. On purchase of the ferries, vested them and the ground and soil adjacent and belonging to them in the commissioners.

The ferries were purchased.

In 1728 a contract to build was entered into with thirty persons.

In 1729 by indenture of bargain and sale between the commissioners of 1st part, the said thirty persons of 2nd part, and certain others, trustees of 3rd part, the commissioners granted to the persons of 3rd part, the said bridge and all tolls, revenues, with all such ground and soil adjacent and belonging to the then late, or then present horse-ferries upon trust to permit the said thirty persons to receive and take the said tolls, and to have the sole management and direction thereof, to pay certain sums therein specified, and afterwards to divide the residue among the said thirty persons.

In 1730 the archbishop granted to the proprietors 200 superficial feet of land to form the approaches (*b*).

There was no other land vested in the proprietors, and no evidence was given as to the annual value of the land separate from the income arising from the bridge, but that income was sufficient to give each of the claimants, as proprietors, an income of more than 40*s.* per annum.

The interest of the present proprietors was derived through and identical with that of the thirty proprietors, [unless altered or modified by the Thames Conservancy Act, 1870 (33 & 34 *Vict.* cap. cxlix.)] and such interest had always been conveyed as freehold estate.

(*a*) For the difference between the cases see note (*a*), p. 699.

(*b* This paragraph only affected the *Surrey* case relating to the *Putney* end.

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WADMORE v. OVERSEERS OF PUTNEY.

October, 1871, before the Revising Barrister for the county of *Middlesex, Frederick Charles Dear*, a person on the register of voters for the said county, duly objected to the names of *James Foster Wadmore*, and twenty-two other persons (who had respectively duly claimed to have their names inserted in the *Fulham* list of voters for the said county), to their right to have their names inserted.

2. The claims of the persons so objected to, appeared thus :—

Wadmore, James Foster	35, *Great St. Helens, E.C.*	Freehold share in *Fulham Bridge*

3. In support of the right of the claimants to have their names inserted and placed on the said list, the following documents and facts were duly established in evidence.

4. In or about the year 1724, the Act 12 *Geo.* 1, c. 36, was passed, intituled, "An Act for building a Bridge across the River of *Thames*, from the Town of *Fulham*, in the county of *Middlesex*, to the Town of *Putney*, in the county of *Surrey*."

5. By section 1 of that Act, certain persons were constituted and appointed commissioners and trustees

The proprietors met once a year and chose a committee of management of six out of their body. The claimants were holders of shares of sufficient annual value. The bridge was built on piles driven into the bed of the river, and on brick foundations, on land formerly gravel and soil adjacent and belonging to the ferries. It also had toll houses of brick at each end.

[By "The Thames Navigation Act," 33 & 34 *Vict.* c. cxlix, sec. 10, sub-sec. 4, the committee of management were empowered to raise money by mortgage of the tolls.

By sub-sec. 6, the improvements of *P. Bridge* authorised by that section, and the same bridge and the lands thereunto belonging, and the tolls, &c., were "vested in the committee of management and their successors for the time being, subject to the trusts on which the same are held at the passing of this Act."] (*a*).

Held that, it having been established by *Tepper* v. *Nichols* (*Hopw. & P.* 202), that as the commissioners had no power to convey the land, but only the tolls, the conveyance by them was inoperative, and the committee of management were not trustees of the land for the shareholders, the 33 & 34 *Vict.* c. cxlix, sec. 10, had not altered the pre-existing trusts so as to make them so, and therefore the claimants were possessed of no equitable estate in the land.

(*a*) The paragraphs in brackets are additions to the case of *Tepper* v. *Nichols*.

for designing, directing, ordering, and building such bridge, and for maintaining, preserving, and supporting the same when built; and they were empowered at any time, after the 24th day of *June*, 1726, to design, assign, and lay out how, and in what manner, the said bridge should be made and built, from the town of *Fulham* to the town of *Putney* aforesaid, and the ways and passages to and from the same, and to preserve and keep in repair such ways and passages from time to time, and to make contracts, and do all matters and things for carrying on and effecting the purposes aforesaid, and to cause the same to be done and perfected accordingly.

6. And to the intent that the navigation of the said river of *Thames* might receive no prejudice by section 2, it is enacted, that when the said bridge was built across the said river, there should remain free and open passage for the water to pass and repass through the arches or passages under the said bridge of 700 feet at the least, within the then present banks of the said river. By sect. 5, bodies corporate, and others who were seized of ground in *Putney* or *Fulham*, which might be required for the purpose of making convenient approaches to the said bridge, were enabled to convey to the said commissioners and trustees, or to any nine or more of them, or their successors, or as they should appoint, any such ground for the purposes of that Act.

7. By sect. 7 it is enacted, "that it shall be lawful to and for his Majesty, his heirs and successors, by letters patent, under the great seal of *Great Britain*, to incorporate all and every the commissioners and trustees appointed by this Act, or who shall be

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appointed pursuant thereto, to be commissioners and trustees for putting this Act in execution, or such of them as shall be then living, and such others as his Majesty, his heirs, or successors, shall think fit, to be one body politic and corporate, in deed and in name, and they and their successors to have perpetual succession and a common seal, and such seal from time to time to break, change, make new, or alter, as shall be found most expedient, and that they and their successors shall be able and capable in law to have, purchase, receive, enjoy, possess, and retain to them and their successors, messuages, lands, rents, tenements, and hereditaments of what kind, nature, or quality soever; and also to sell, grant, demise, alien, or dispose of the same, or any part thereof, at their free wills and pleasure, to sue and implead, be sued and impleaded, answer, and be answered, in courts of record, or elsewhere, and to choose their successors and officers from time to time, and to do and execute all, and singular other matters and things that to them shall or may appertain to do with such powers and clauses as shall be necessary or requisite for erecting, building, preserving, and supporting the said bridge, and the ways and passages thereto from time to time."

The said commissioners and trustees were never incorporated in pursuance of this Act.

8. By sect. 8 it is enacted, "that it shall not be lawful to or for the corporation or company which shall or may be erected or established by virtue of or pursuant to this Act as such corporation or company, to borrow or take up, or give security for, any sum or sums of money payable in less than six months, or to discount any bills of exchange, or other bills or notes

whatsoever, or to keep any books or cash of, or for any person or persons, bodies politic or corporate whatsoever, other than, and except only the proper books, moneys, and cash of the said company or corporation."

9. By sect. 10 it is enacted, "that certain pontage or toll shall be paid before any passage over the said bridge shall be permitted, and that the said pontage or toll shall be vested in the said commissioners, to be by them applied in accordance with the provisions of the said Act, towards the expenses of making and maintaining the said bridge, ways, and passages, and purchasing the necessary ground for the same."

10. By sect. 13, the commissioners, or any eleven or more of them were empowered when incorporated by indenture or writing, under their common seal, to convey and assure the toll by that Act granted, or any part thereof, as a security for any sum or sums of money by them, to be borrowed for the purposes of the Act, and to grant any annuities for one, two, or three lives, or for 21 years, or a less term, such annuities to be chargeable upon, and payable out of the tolls, estates, and revenues belonging to such corporation.

And by sect. 14 it is enacted, "that such annuities shall be personal estate."

11. By sect. 16 it is enacted, "that it shall be lawful for the said commissioners and their successors, and for such intended company or corporation, and their agents or officers from time to time, to remove any shelfs in the said river of *Thames*, and to make the same river deeper."

12. By sect. 17 it is enacted, that all stones, bricks,

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planks, piles, and other materials, which shall be made use of, for or towards building or making the said bridge, or in or about the same, or for maintaining, repairing, or supporting the same, or for making the said river deeper as aforesaid, shall always be deemed to belong and appertain to the commissioners and corporation aforesaid. And by the 18th sect. it is provided, that if the said bridge should at any time become damaged, it shall be lawful for the said commissioners or corporation to set up ferries across the said river, near to the said bridge, and to take certain rates and duties for passage by such ferries over the same.

13. By sect. 19 it is enacted as follows:—"It shall not be lawful to erect or build the said bridge, or any part thereof, before or until full and ample satisfaction be made for all such prejudice, loss, or damage as shall or may be sustained or suffered by any of the owners, proprietors, lessees, or others having any property or interest in the present horse or foot ferries, between *Fulham* and *Putney* aforesaid."

14. By sect. 22 it is enacted, "that nothing in this Act contained, shall extend, or be construed to extend to prejudice, or take away any right, property, or jurisdiction of the Mayor, or of the Mayor Commonality, and citizens of the city of London, to, in, and upon the river of *Thames* aforesaid, other than, and except to remove any shelf or shelfs, or to deepen or widen the said river where the said bridge shall be built, and to do every other matter and thing as shall or may be necessary for the erecting and maintaining the said bridge."

15. By the Act 1 *Geo.* 2, c. 18, for explaining and

amending the Act above referred to, it is by sect. 1 enacted as follows:—"The commissioners and trustees appointed by the said recited Act, and those appointed by this Act, or any nine or more of them, and the commissioners and trustees when incorporated in pursuance of the said former Act, shall have, and they have hereby full power and authority to contract and agree with any person or persons whatsoever, as well commissioners and trustees as others to erect and build a bridge across the said river of *Thames*, from the said town of *Fulham* to the said town of *Putney*, and to repair, maintain, and support the same, when built in such manner as by the said commissioners and trustees, or corporation aforesaid, shall be judged proper, and the said commissioners and trustees, or corporation aforesaid, or any nine or more of the said commissioners and trustees before such incorporation, have hereby power and authority to grant any annuity or annuities in fee out of the profits, incomes, revenues, or tolls of the said bridge, in such manner as they may by the said former Act grant any other annuity or annuities, all which annuities in fee to be granted pursuant to this Act shall be registered, and shall be assignable and devisable as the said other annuities are, by the said former Act, and such annuities in fee shall be deemed personal estates, and shall go as such."

16. And for the more effectual enabling the said commissioners and trustees, and corporation aforesaid, as speedily as may be to complete and perfect the said work, by sect. 3 it is enacted, "that it shall and may be lawful to and for the said commissioners and trustees, or any nine or more of them before incor-

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porated and also lawful for such corporation, when created, at any time or times to convey and assign over in perpetuity or otherwise, all or any tolls or revenues, profits, or incomes, of or belonging to the said bridge or ferries, or which shall in anywise arise, or accrue, or belong to the same, unto such person or persons as will undertake, contract, and agree to erect and build the said bridge, and to preserve and keep up the same in good and sufficient repair, and shall give sufficient security so to do to the satisfaction of the said commissioners and trustees, and corporation aforesaid, anything herein, or in the said former Act to the contrary notwithstanding.

17. By sect. 5 it is enacted as follows:—"It shall not be lawful for the said commissioners and trustees or corporation to erect or build the said bridge, or any part thereof, before or until full and ample satisfaction be made for all such prejudice, loss, or damage, as shall or may be sustained or suffered by any of the proprietors of the horse-ferries between the said towns of *Putney* and *Fulham*, unless the proprietors of the said horse-ferries, by writing under their respective hands and seals, should consent and agree with the said commissioners and trustees, or any nine or more of them, or the said corporation to permit the said commissioners and trustees or corporation to build the same, before such satisfaction shall be made, and in case such consent of the said proprietors shall be had and obtained in manner aforesaid, that then the said bridge when built, and all tolls, revenues, profits, and incomes belonging, or to belong to the same, shall be, and are hereby made chargeable, and charged in the first place, with all such sums of money as are by the said

former Act to be paid to the respective owners, proprietors, and persons interested in the present ferries between *Fulham* and *Putney* aforesaid, and that upon payment thereof respectively, or tender and refusal, all ownership, properties, and interest of, in, or to the horse and foot ferries, between *Fulham* and *Putney* aforesaid, shall be and are hereby extinguished and determined, and the said ferries and passage over the river of *Thames* there, and the ground and soil adjacent and belonging to the said respective ferries shall be, and are, by the authority of this Act, transferred to, and absolutely vested in the said commissioners and trustees, and corporation aforesaid, and their successors and assigns for ever."

All such moneys and payments for the said horse-ferries have long since been duly made and paid by the thirty persons who, as hereafter is mentioned, contracted with the commissioners and trustees of the said hereinbefore mentioned Acts, for the building of the said bridge.

18. Copies of both of the Acts above referred to accompany this case, and are to be taken to be, and form part of the same, for the purpose of reference or otherwise.

19. The ferries referred to in the said Acts on the *Putney* side of the river, were held, and were parcel of the Manor of *Wimbledon*, and on the *Fulham* side were held, and were parcel of the Manor of *Fulham*, and previously to the 21st of *March*, 1728, *Daniel Pettiward* and *William Skelton* had been respectively admitted to, and each of them, then held in fee by copy of the court rolls of the respective Manors, one undivided moiety of the ferries on both the *Putney*

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then rest and residue of the moneys to be raised by the said tolls, revenues, profits, and income of the said bridge ferries, and other the premises (if any) into and amongst the said thirty subscribers and proprietors for the time being, and their respective heirs and assigns, rateably and proportionably, according to the several sums of money by them subscribed for the purposes aforesaid, and to their several and respective rights, shares, and interests of, in, and to the same, to have, take, and enjoy the same as tenants in common, and not as joint tenants.

22. And by the same deed it was provided that in case the tolls, revenues, profits, and incomes of the said bridge or ferries should at any time or times thereafter fall short, and not be sufficient to answer and make good all such sums of money as should be requisite for putting and keeping the said bridge, together with the ways and passages to and from the same, in good repair, within a reasonable time to be allowed for making such repairs, or should not be sufficient for the payment of all the matters and things thereinbefore particularly mentioned, and the charges of the trustees in the execution of the trusts ; then all such sums of money as should so fall short, or be wanting for the said purposes, should from time to time be paid and borne by the said thirty subscribers, the parties thereto of the second part, their heirs and assigns, rateably and proportionably, and according to the several sums of money subscribed by them respectively towards the purposes aforesaid, and to their several rights, shares, and interests therein.

A copy of the last mentioned deed accompanies this case, and is to be taken to be, and form part

of, the same, for the purpose of reference or otherwise (*a*).

23. There is no other land in the county of *Middlesex* vested in or belonging to, or claimed by the said proprietors of the said bridge, except what is comprised in the before-stated deed of the 11th *November*, 1729, and no evidence was adduced before the Revising Barrister as to the annual value of, or income arising from, the said land, separate and apart from the income derived and arising from the said bridge and land together [which said last-mentioned income, in the shape of tolls, revenue, profits, and income is sufficient to give to each of the claimants in this case an income of more than 40*s.* per annum (*b*)].

24. The interest of the present proprietors in the said bridge is derived from and through the thirty persons, parties to the said deed of the 11th day of *November*, 1729, of the second part, and is identical in all respects with the interests of the said thirty persons, under and by virtue of the said deed [save in so far as the same may have been affected, or altered, or modified, or enlarged by the provisions of "The Thames Navigation Act, 1870," hereinafter mentioned (*b*)], and such interest has always been con-

(*a*) The only material difference between the cases of *Wadmore* v. *Dear*, and *Wadmore* v. *The Overseers of Putney* (where the claim was, to be inserted in the *Putney* list for the county of *Surrey*) is that in the latter case at this point the following paragraph is inserted:—

"On the 16th day of *June*, 1730, by grant of that date, the *Archbishop of Canterbury* granted to the proprietors of *Putney Bridge*, 200 superficial feet of land, part of the churchyard of *Putney*, for the purpose of making the passage to and from the said bridge more commodious, and the same was used for that purpose, and now forms part of the approach to the bridge."

(*b*) The paragraphs in brackets are additions to the case stated in *Tepper* v. *Nichols*.

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then rest and residue of the moneys to be raised by the said tolls, revenues, profits, and income of the said bridge ferries, and other the premises (if any) into and amongst the said thirty subscribers and proprietors for the time being, and their respective heirs and assigns, rateably and proportionably, according to the several sums of money by them subscribed for the purposes aforesaid, and to their several and respective rights, shares, and interests of, in, and to the same, to have, take, and enjoy the same as tenants in common, and not as joint tenants.

22. And by the same deed it was provided that in case the tolls, revenues, profits, and incomes of the said bridge or ferries should at any time or times thereafter fall short, and not be sufficient to answer and make good all such sums of money as should be requisite for putting and keeping the said bridge, together with the ways and passages to and from the same, in good repair, within a reasonable time to be allowed for making such repairs, or should not be sufficient for the payment of all the matters and things thereinbefore particularly mentioned, and the charges of the trustees in the execution of the trusts; then all such sums of money as should so fall short, or be wanting for the said purposes, should from time to time be paid and borne by the said thirty subscribers, the parties thereto of the second part, their heirs and assigns, rateably and proportionably, and according to the several sums of money subscribed by them respectively towards the purposes aforesaid, and to their several rights, shares, and interests therein.

A copy of the last mentioned deed accompanies this case, and is to be taken to be, and form part

of the same, for the purpose of reference in [illegible] wise as

23. There is no other land in the county of [illegible] vested in or belonging to, or claimed by the said proprietors of the said [illegible] except what is contained in the before-mentioned deed of the 21st December 1720, and no evidence was adduced before the [illegible] Barrister as to the annual value of the tolls arising from, the said land, [illegible] derived and arising in the said [illegible] gether [which said [illegible] of tolls, revenue [illegible] give to each of the [illegible] more than 4 s. per annum.

24. The [illegible] said bridge is [illegible] persons, parties [illegible] November, 17[illegible] all respects with [illegible] under and by virtue [illegible] as the same may [illegible] modified, or enlarged [illegible] Thames Navigation [illegible] tinued)], and such [illegible]

(a) The only material difference between the cases of *Wadmore* v. *Low*, and *Wadmore* v. *The Conservators of Putney* (where the claim was to be inserted in the *Putney* list for the county of *Surrey* as for the latter case at this point the following paragraph is inserted:—

"On the 26th day of June, 1730, by grant of that date, the Archbishop of Canterbury granted to [illegible] Tapper [illegible]

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veyed and transmitted as, and dealt with as freehold estate, and the shareholders or proprietors in the said bridge are at present about 100 in number.

25. The proprietors meet once a year, and select a committee of management of six, out of their own body, to manage their affairs.

26. The said persons so objected to, as aforesaid, are respectively the holders of a share, or part of a share, of such interest as aforesaid, and the sufficiency of the annual money value of such share, or part of a share, is not now in dispute.

27. The bridge is built partly upon piles driven into the bed of the river, and at either end upon brick foundations, which stand respectively upon that part of the banks between high and low water mark, whence formerly the ferries used to ply from side to side, and in part upon land which formerly was ground and soil adjacent, and belonging to the said ferries.

28. There are toll-houses at each end of the bridge, at which tolls are collected, and each of them is a structure of brick, and stands upon the brick foundations of the bridge referred to in the preceding paragraph hereof.

29. By an Act passed in the 33rd and 34th years of Her present Majesty, "The Thames Navigation Act, 1870" (33 & 34 *Vict.* cap. cxlix.), reciting, amongst other things, that it was expedient that provision be made for the improvement of *Putney Bridge*, it was by the 10th section enacted that:—

"With respect to the improvement and management of the bridge across the *Thames*, between *Fulham*, in the county of *Middlesex*, and *Putney*, in the county

of *Surrey* (in this section referred to as *Putney Bridge*), the following provisions shall have effect, namely :

"1. The committee of management, for the time being, of *Putney Bridge* (in this section referred to as the committee of management), shall, within twelve months after the passing of this Act, widen the centre arch of *Putney Bridge*, in accordance with the deposited plans and sections.

"2. If the committee of management desire to erect a landing place in connection with *Putney Bridge*, they may do so without payment to the conservators, but so that the same be made at such place and in accordance with such plan as the conservators approve, and the same shall be subject to the bye-laws and regulations of the conservators.

"3. In widening the centre arch and erecting a landing-place, as aforesaid, the committee of management may close *Putney Bridge* and its approaches to such extent, and for such time as in their judgment may be expedient.

"4. For the purposes of this section the committee of management may raise money not exceeding the sum of six thousand pounds by mortgage of all or any part of the tolls, revenues, profits, income, or property of, or belonging to *Putney Bridge*, with such powers of sale and other incidental powers as the lenders and the committee of management agree on, and the receipts in writing of the committee of management, or of any four or more

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of them, shall effectually discharge the lenders from the money lent, and from all responsibility in respect of the application thereof.

"5. All money so borrowed by the committee of management shall be applied for the purposes aforesaid, and not otherwise.

"6. The improvements of *Putney Bridge* authorized by this section, and the same bridge and the lands thereunto belonging, and the tolls revenues, profits, and income of, or belonging to the same, shall be vested in the committee of management, and their successors for the time being, subject to the trusts on which the same are held at the passing of this Act.

"7. In case at any time *Putney Bridge* is purchased compulsorily, under the authority of Parliament, due regard shall be had in the ascertainment of the amount of compensation to be paid in respect thereof, to the money expended by the committee of management in widening the centre arch as aforesaid, and to the costs and charges incurred by them in relation thereto."

And by the 11th section of the same Act, it was enacted that:—

"The conservators, on the one hand, and the proprietors of the bridge across the river *Thames*, between *Fulham*, in the county of *Middlesex*, and *Putney*, in the county of *Surrey*, commonly called *Putney Bridge*, on the other hand, may from time to time enter into, and carry into effect such agreements as they think fit, relative to the alteration, raising, lowering, removal, or rebuilding, wholly or in part, of *Putney Bridge*, and

relative to any contribution to be made by the proprietors of *Putney Bridge* to the expenses of any such works, and to the raising of money by the proprietors of *Putney Bridge* for the purposes of any such works or contribution, and every such agreement shall have the like effect as if it were in terms contained in and enacted by this Act, and shall be binding on and enforceable against the conservators and the proprietors of *Putney Bridge*, party thereto accordingly "(a).

A copy of the last-mentioned Act of Parliament, "The Thames Navigation Act, 1870," accompanies this case, and is to be taken and form part of the same for the purpose of reference or otherwise.

For the said persons objected to it was contended that, notwithstanding the decision of the Court of Common Pleas, in the case of *Tepper* v. *Nichols* (b), decided on the 24th day of *November*, 1864, and under and by virtue of the said Acts of Parliament, and particularly under and by virtue of "The Thames Navigation Act, 1870," and of the said Deed of Bargain and Sale of the 11th day of *November*, 1729, hereinbefore stated, they had, respectively such freehold estates in the said bridge, tolls, and other property comprised in the said Acts and Deed, as entitled them respectively to be on the list of voters for the said county; and for the said *Frederick Charles Dear*, the objector, it was contended that they had not respectively such freehold estates as would entitle them to vote for the said county, and also that the shareholders were a company or corporation, or "quasi" corporation, and that the individual

(a) Par. 29 is, of course, an addition to *Tepper* v. *Nichols*.

(b) *Hopw. and Ph.* 202.

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shareholders, being only entitled to a share of the receipts and profits, were not entitled to be on the said list of voters. The Revising Barrister decided in favour of the said *Frederick Charles Dear*, that having regard to the decision of the Court of Common Pleas in the said case of *Tepper* v. *Nichols* (*a*), the said several persons objected to had not respectively, notwithstanding the provisions of "The Thames Navigation Act, 1870," such freehold estates as entitled them respectively to be on the said list of voters, and accordingly disallowed their several claims. If the decision were wrong, the names of the said persons objected to were to be inserted on the register for the said parish of *Fulham*.

The appeals were consolidated.

Edward Clarke for the appellants. The case stated, in regard to the *Putney* side, *Wadmore* v. *Overseers of Putney* only differs from that as to the *Middlesex* side in this, that the former contains an additional paragraph reciting that the Archbishop of Canterbury granted to the proprietors of *Putney Bridge* 200 superficial feet of land for the purpose of making the passage to and from the bridge more commodious (*b*). This claim of the shareholders has been already before the Court in *Tepper* v. *Nichols* (*a*). There is now to be considered the effect of "The Thames Navigation Act, 1870," 33 & 34 *Vict.* cap. cxlix. The sole question which the Court entertained on the former occasion was, whether or not the commissioners originally appointed had been endowed with power to convey

(*a*) *Hopw. & Ph.* 202. (*b*) *Ante*, p. 699.

the land. If there had been that power, the Court was evidently disposed to hold that the shareholders possessed equitable freeholds, with which the tolls might be so connected as to afford the qualification to vote. Then does the recent Act vest equitable freeholds in the shareholders, and thus effect the required union? Throughout, it recognises the committee of management and their successors as a distinct body. By sub-sect. 4 of sect. 10, power is given to the committee to raise money by mortgage, which implies that it was intended the fee should pass to them. By sub-sect. 6 "the bridge and lands thereunto belonging, and the tolls, &c., shall vest in the committee of management, and their successors for the time being, subject to the trusts on which the same are held at the passing of this Act." The commissioners constituted under the original Act have long since disappeared, and no longer exist as a body.

[WILLES, J. Whatever rights existed in the trustees before are now transferred to the committee. That alters the succession, but not the property. Do you contend that the committee take more under sub-sect. 6 than existed in the trustees before?]

It is contended that the effect is to combine and vest in the committee what was in the two sets—the commissioners and the trustees. The commissioners had the property in the land.

[WILLES, J. Not absolutely. The argument on which the judgment in *Tepper* v. *Nichols* proceeded was, that the commissioners had only such property as was

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necessary for the discharge of the duties imposed by the Act, with no power to convey it away to others.]

Yes; but no doubt was expressed as to the property being in them. In that case it was ascertained that the right to the land was in one set of persons, and the right to the tolls in another. By the force of this Act of Parliament the property in the land and the tolls are conjoined.

[WILLES, J. In *Tepper* v. *Nichols* the Court must not be taken to assert that "tolls" may not be a tenement within the stat. *Hen.* 6. That point was not raised, perhaps because it would have been answered that the shareholders, though possessing an equitable interest, were not in possession themselves. Does not the same objection exist under this Act, that they are not in possession?]

They may be *cestui que trust* in possession: 7 & 8 *Will.* 3, c. 25, s. 7; 2 *Will.* 4, c. 45, s. 23; 6 *Vict.* c. 18, s. 74. Sub-sect. 6 recognises the committee, and s. 11 recognises the proprietors. It is submitted that under sub-sect. 6 the committee are, for the purpose of borrowing, trustees for the proprietors.

[KEATING, J. What became of the commissioners?]

Some were specially named, some were *ex officio*, as the Chief Justice of the Common Pleas.

In *The King* against *The Inhabitants of Barnes* (*a*),

(*a*) 1 *Barn.* & *Ad.* 113.

the proprietors of *Hammersmith Bridge* were held rateable in respect of the land they had purchased to build the bridge, and of the tolls they were enabled to receive. In the argument, the case of this *Putney Bridge* was cited as mentioned by *Buller*, J., in *Rex* v. *Aire & Calder Navigation* (*a*), who there says :—"The case of *Putney Bridge* is an illustration of the present: there the bridge is rated in *Fulham* and *Putney* parishes at £700 a-year in each." Here it is contended that there is land vested in the committee.

[WILLES, J., referred to *Badger* v. *South Yorkshire Railway and River Don Navigation Company* (*b*), as an instance where an Act had been held to confer an easement on and over, but no interest in, the soil. He referred also to *Stracey* v. *Nelson* (*c*).]

The legal estate is in the committee.

[BRETT, J. Suppose you are wrong in that first step?]

Then the appellants would be driven to contend that they had an equitable freehold in the tolls.

[WILLES, J. That point seems to be impliedly decided against you, for no doubt the Court had it in mind, and the argument would have been differently put, in *Tepper* v. *Nichols*, if it were not assumed that these tolls were not a tenement within the statute of 8 *Hen.* 6, c. 7.]

(*a*) 2 *T. R.* 660.

(*b*) 1 *E. & E.* 347; 28 *L. J., Q. B.* 118.

(*c*) 12 M. & W. 535.

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McIntyre, for the respondent. The committee, under the recent Act, have not the land in them so as to be trustees of it for the proprietors. The trusts now are the same as before that Act, by its own words, "subject to the trusts on which the same are held at the passing of this Act."

He was stopped by the Court.

Clarke, in reply. The fair construction is, that the commissioners having failed, for want of power, to convey, this Act enables that to be done which the commissioners could not do.

WILLES, J. If the position of the appellants has not been altered by law since the decision in *Tepper* v. *Nichols* (*a*), in 1864, the decision of the Revising Barrister is undoubtedly right. That case is express on the point, and was well decided. The Court did not intend to say that tolls could not in any case be a free tenement within 8 *Hen.* 6, c. 7, but that tolls of the particular description not existing at common law were not so. Such tolls, though put in the place of an ancient ferry must, at common law, be either *toll traverse* or *toll thorough*. In respect of *toll thorough*, which is a payment demanded for a passage through a highway over land not in the ownership of the person claiming the toll, it was necessary to show and prove some special consideration, and here it is not suggested that any such exists. As to *toll traverse*, a payment for passing over the private soil of another, sufficient consideration is implied from the permission

(*a*) *Hopw. & Ph.* 202.

to pass. Without meaning to lay down anything absolutely on the subject, I must say that I am ready to give effect to any claim which may come before us in respect of tolls which fulfil the definition of the words "free land or tenement" of the stat. 8 *Hen.* 6, c. 7, as they were understood at the time of the passing of that statute, and are of the required annual value. Those words apply not only to land, but to a variety of tenements which are not popularly known as land, *e. g.*, a fishery, and would include such "tolls" as were in existence at the time of the stat. *Hen.* 6. There may of course be, and there are tenements in existence created since the passing of that Act, which, though they could not have been originated by mere act of conveyance, have been created by various Acts of Parliament. In the cases of pews which came from *Lancashire, Hinde* v. *Chorlton* (*a*), and *Brumfitt* v. *Roberts* (*b*), though tenements in a sense, the question was whether the special Acts of Parliament and conveyances under them had created and passed interests in land or tenements capable of conferring the franchise.

So in *Tepper* v. *Nichols*, (*c*) the tolls were of a new sort, different to tolls at common law, such as toll thorough, and created and given by statute to persons who took them apart from and irrespective of any interest in the land. The Court, being of that opinion, held that they were not a "tenement" under the stat. *Hen.* 6. It is hardly necessary to say that the Act creating the tolls here is not one intended to affect the franchise, but only to provide and maintain a con-

(*a*) *Hopw. & Ph.* 383.
(*b*) *Ante*, p. 401.
(*c*) *Hopw. & Ph.* 202.; *S. C.*, 18 *C. B., N. S.*, 35.

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venient mode of crossing the river *Thames*. Such tolls could only confer the franchise if they were connected with, and represented the profits of, land. The commissioners, no doubt, assumed the power to convey the land, as well as the right to take tolls; but this Court held, upon the construction of the Act 1 *Geo.* 2, c. 18, that they had no authority under that Act to convey the lands, but only the right to toll, and consequently the trustees to whom it was conveyed had not a "tenement" within stat. 8 *Hen.* 6.

That seems to be the explanation of *Tepper* v. *Nichols* (*a*), with which I do not wish to express any disagreement.

It is established, then, by *Tepper* v. *Nichols* (*a*), that though the property in the land might be vested in the commissioners, yet they had no power to convey the land. In this state of things is passed the Thames Navigation Act, 1870. Sect. 10, sub-sect. 6, provides that "the bridge and the lands thereunto belonging, and the tolls, revenues, profits, and income of or belonging to the same shall be vested in the Committee of Management and their successors for the time being, subject to the trusts on which the same are held at the passing of this Act." Unquestionably the tolls were at that time held by the trustees upon trust for the shareholders to participate in them as profits of the bridge, but the land was not held in trust for them. In no sense could the Committee of Management be trustees of the land for the shareholders. The last enactment must, therefore, be read in such a way as to apply the trusts before existing to each species, *viz.*, land and tolls.

(*a*) *Hopw. and Ph.* 202.

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The statute vests both in the committee in its corporate capacity only for the purpose of avoiding the necessity of creating new trustees from time to time, and not with any intention of altering the existing trusts which were ascertained in *Tepper* v. *Nichols*. Consequently the claimants are in no better position now than they were at the time of that decision. The Revising Barrister was therefore right in both cases.

KEATING, J. I am of the same opinion. It is true that sub-sect. 6 of sect. 10 of the Thames Navigation Act, 1870, does vest the land as well as the tolls in the Committee of Management, but "subject to the trusts on which the same were held at the passing of this Act." What those were was discussed and adjudicated on in *Tepper* v. *Nichols*. The shareholders have therefore acquired no additional right.

BRETT, J., concurred.

WILLES, J., referred to the *Mayor of Nottingham* v. *Lambert* (*a*), as an instance of toll thorough.

Decisions affirmed.

Attorneys—For Appellants, *Evan Hare*.
For Respondents, *W. Gardiner*.

(*a*) *Willes*, 111.

CHORLTON, Appellant; THE OVERSEERS OF STRETFORD, Respondents.

Nov. 22.

"Lessee" in sect. 5 of 30 & 31 *Vict.* c. 102, includes a sub-lessee in actual occupation.

Quære, whether the proviso in sect. 20 of 2 *Will.* 4, c. 45, is to be read into sect. 5 of 30 & 31 *Vict.* c. 102, so as to exclude a sub-lessee not in actual occupation. *Semble*, per *Brett*, J., that it is.

THE case stated:—

At a Court for the revision of the list of voters for the polling district of *Stretford* in the south-eastern division of the county of *Lancaster*, *Thomas Sorwood*, described on the list of persons claiming to be entitled to vote for the township of *Stretford* as follows:—

Name.	Place of abode.	Nature of qualification.	Street, lane, &c.
Sorwood, Thomas	4, *Gladstone Street, Stretford*	Leasehold houses, term over 60 years	Nos. 60 and 62, *Bold Street*, and No. 4, *Gladstone Street*

was duly objected to.

The said *Thomas Sorwood* had no qualifying interest whatever in the houses in *Bold Street*, but he was a sub-lessee for a period of not less than sixty years of, and was in actual occupation of No. 4, *Gladstone Street*. The clear yearly value of No. 4, *Gladstone Street*, was over £5 but under £10 over and above all rents and charges payable out of or in respect of the same. It was contended, on behalf of the claimant, that the 5th section of the Representation of the People Act, 1867, extended to the case of a sub-lessee as well as to that of a lessee, and that such section 5

was in substitution, and was substantially a repeal of that part of the 20th section of the 2 *Will.* 4, c. 45, which relates to the clear yearly value of leaseholds notwithstanding the 56th and 59th sections of the said Act.

The Revising Barrister considered that the claimant's case did not come within the 5th section of the Representation of the People Act, 1867, because he was not entitled to the said house either as lessee or assignee for the unexpired residue of any term originally created.

2ndly. That the claim could not be supported under sect. 20 of the Reform Act, 2 *Will.* 4, c. 45, because the said house was not of the clear yearly value of not less than £10; and,

3rdly. That the said two Acts could not be construed as if the last part of the said 20th section of the Act of *Will.* 4 beginning with the words "Provided always," formed part also of the said 5th section of the Act of 1867. He therefore disallowed the said claim of the said *Thomas Sorwood*, and struck his name off the list of claimants, deciding that to entitle a person being only a sub-lessee of premises to vote in the election of a knight of the shire to serve in Parliament for the said division of the said county, such premises must be of the clear yearly value of not less than £10 over and above all rents and charges as aforesaid.

If the Court should be of opinion that his decision was wrong, then the name of the said *Thomas Sorwood* was to be inserted in the said list of claimants.

Joshua Williams, Q.C., for the appellant. The

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Revising Barrister's decision cannot be supported. He has held that a sub-lessee of a term of not less than sixty years, above £5 in annual value, though in actual occupation of the premises, is not within sect. 5 of "The Representation of the People Act, 1867." He can hardly have thought, indeed, that the word "lessee" is insufficient to include a sub-lessee. But the difficulty in his mind seems to have been as to the words "originally created," which he seems to have thought must mean created by the freeholder. Obviously, however, that is not the meaning, all that is meant being that the term must be of not less than sixty years at its commencement, although it may have less to run at the time of claim. Light is thrown on the section under consideration by referring to sect. 20 of the Reform Act. There the franchise in respect of a term of sixty years is conferred in precisely similar language, except as to value, and the proviso at the end of the section distinctly recognises a sub-lessee as a "lessee" within the earlier branch of it. Providing, as it does expressly, that he shall not vote, unless in actual occupation, it necessarily recognises him as a "lessee" entitled, as such, to vote if in actual occupation. *Warburton* v. *The Overseers of Denton* (a), is in point to show that sect. 5 of the Act of 1867, and sect. 20 of the Act of 1832 should receive the same construction. Moreover, if necessary, there seems strong ground for contending that the proviso in sect. 20 of the Act of 1832, should be read in sect. 5 of the Act 1867. Again, the proviso in sect. 5 of the Act of 1867, makes compliance with sect. 26 of the Act of 1832

(a) *Ante*, p. 432; *S. C., L. R.*, 6 *C. P.* 267.

essential; and the words "lessee or assignee" in sect. 26 of the Act of 1832 must receive the same construction in their application to both Acts; and, consequently, if, as applied to the first Act, "lessee" includes "sub-lessee," it does so also as applied to the second Act.

No one appeared on behalf of the respondents.

WILLES, J. I am of opinion that in this case the appeal is well founded. The Revising Barrister appears to have come to the conclusion that an under-lessee is not a lessee within the meaning of sect. 5 of "The Representation of the People Act, 1867;" not, indeed, upon the ground that a lease by a lessee is the less a lease, because not made by the freeholder; but relying, apparently, on the words "originally created." His attention would seem to have been distracted by these words from that with which he had to deal, *viz.*, the term that had been created, and he seems to have searched for the origin of the title, instead of the original creation of the term. The expression "originally created," though a somewhat remarkable one, was no doubt used to exclude the objection that less than sixty years of the term remained, where the term at its original creation was for not less than sixty years. But if any doubt could arise as to the meaning of the words, it is at once dispelled, when we refer to sect. 20 of the Reform Act, 1832. The language there employed (if we substitute £5 for £10) is identically the same as in the section under discussion, and so also is the subject-matter dealt with. And there the proviso says expressly "that no person being only a *sub lessee*, or the assignee

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of any under-lessee, shall have a right to vote," "in respect of any such term of sixty years," "unless he shall be in the actual occupation of the premises." That proviso is not so much a legislative declaration that "lessee" is to include a sub-lessee, inasmuch as the word "lessee" unquestionably does so, but simply a provision that, as a sub-lessee is so included, and great abuses might arise by splitting up a term by way of sub-leases to create votes, a sub-lessee, or his assignee, is not to have a vote, unless in the actual occupation of the premises. The case of *Warburton* v. *The Overseers of Denton* (*a*) (where the question was whether under sect. 5 of "The Representation of the People Act," a chattel rent-charge conferred a vote) is an authority especially binding on us. We held there that it did not, because it could not, under sect 20 of the Reform Act, the language of the proviso in sect. 20 showing, as we considered, that the subject-matter must be capable of corporal occupation. Feeling bound, though in restriction of the franchise, to hold that case not within the section, we are equally bound here by a parity of reasoning to hold in favour of the franchise that this case is included.

Hereafter a question of great nicety may arise (in the event of a claim under sect. 5 of "The Representation of the People Act, 1867," by a sub-lessee not in occupation), by reason of the proviso in sect. 20 of the Reform Act not having been repeated in the later Act. The reasonable construction would seem to be, if the language will admit of it, that by virtue of ss. 56 and 59 the proviso should be read into sect. 5. If that can be done, all difficulty at once vanishes. If not, I still

(*a*) *Ante*, p. 432; *S. C.*, *L. R.*, 6 *C. P.* 267.

think, for the reasons already given, that the present case is within the section.

BYLES, J., concurred.

BRETT, J. I am of the same opinion. The question is whether the case comes within sect. 5 of "The Representation of the People Act, 1867." Reading the section by itself, I should have thought it did. "Lessee" includes a sub-lessee, and the words "any term originally created," seem only to apply to the state of things at the creation of the term. But when I further look to the fact that the first branch of the section repeats sect. 19, and the second branch sect. 20, of the Reform Act, and that the proviso at the end expressly refers to sect. 26 of the Reform Act, I am led to the conclusion that the intention was not to create a franchise of a new nature, but to reduce the value from £10 to £5.

Although it is not necessary to our decision here, I still think that, having regard to ss. 56 and 59, we must read sect. 5, not as made in substitution for the provisions of the former Act, except where absolutely necessary. As to value, no doubt it is necessary; but I cannot help thinking that whenever the question comes up for decision, it will be found that the proviso in sect. 20 of the Act of 1832 must be read into sect. 5 of the Act of 1867.

Decision reversed.

Attorneys—For Appellant, *Horne & Hunter*, for *Blain & Chorlton, Manchester.*

FERNIE, Appellant; SCOTT, Respondent.

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The Mayor, Aldermen, and Burgesses of Stafford had for many years before 1835 (when the Municipal Corporations Act passed) been possessed of certain land within the borough, held and enjoyed as follows:—Each member of the town council had 2 acres for his life, and his widow after his decease. The other acres were distributed in allotments of an acre each to persons selected by the mayor, subject to small payments for entrance and rent. Non-residence and receipt of parochial relief were grounds of forfeiture. In 1836 a by-law passed that the future enjoyment of any vacant parts of the land should be by the poor and necessitous burgesses qualified to vote, or their widows, respectively resident in the borough. The allotments to be each of an acre only, and the rents and days of payment to be from time to time fixed by the council, at their reasonable discretion. In the selection of occupants two grounds of preference to be observed alternately, seniority as a burgess, and the greatest number of children at home under ten years of age. Members of the council to be incapable of holding. The claimant was admitted to an acre under an order of the council, which declared him to be a poor and necessitous burgess resident within the borough, and ordered the acre to be delivered to him, "as tenant thereof to the council, and that he do pay 5*s.* entrance money and 5*s.* per annum as and for rent until further notice, subject to the right of the council to get gravel, sand, and stone." *Held*, that the claimant had no equitable freehold in the acre he occupied.

THIS was a case stated by one of the Revising Barristers for *Staffordshire*. *Alexander Scott* duly objected to the name of *Joseph Abberley* being retained on the the list for the Western Division of the county.

The following facts were established by the evidence:—

1. The mayor, aldermen, and burgesses of the borough of *Stafford* for many years previously to the passing of the Municipal Corporation Act, 1835, were possessed of certain land situate within the said borough, and known by the name of *Coton Field*.

2. Before 1835, the custom and practice of the mayor, aldermen, and burgesses with regard to the occupation of the said land was as follows:—each member of the common council, usually called the corporation, had two acres for his life and his widow after his decease, so long as she continued such widow, and resided in the borough. But a non-residence in the borough or the receipt of parochial relief was a

forfeiture of the holding. The other acres, as they became vacant by death or forfeiture, were distributed by the mayor for the time being, one each to be held by those persons that he selected, for the same tenure and under the same customs as those above described. If the acre was in tillage, 5*s.* was paid by each person to the treasurer of the corporation as entrance money on taking possession. If in grass, 10*s.* as entrance money was paid. The rents have varied, some having paid 2*s.* 6*d.*, others 3*s.* 6*d.*, and others 5*s.* a year.

3. The Municipal Corporation Act superseded the old charter under which *Stafford* became a corporation.

4. In 1836 a by-law was enacted to point out the manner in which the corporation of the borough of *Stafford* should deal with the *Coton* acres.

5. The following is the by-law referred to :—

Borough of *Stafford*, to wit.

At a quarterly meeting of the council of the borough of *Stafford*, held this 9th day of *February*, 1836, at the mayor's office within the said borough, two-thirds of the whole number of the said council being present (then followed the names) :

"It is now by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered as follows :—

"Whereas the mayor, aldermen, and burgesses of the said borough for many years now last past, to wit, from the 12th of *January* in the fourth year of the reign of our late Sovereign Lady Queen Anne, have been entitled to the fee simple and inheritance of and in certain lands and tenements near the said borough, situate in the manor of *Coton*, commonly

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called the *Coton Field*, subject, nevertheless, to a certain perpetual annual rent-charge amounting to the sum of £12, now payable to the Right Honourable *Charles Chetwynd* Earl *Talbot*; and also to a certain perpetual annual payment, amounting to the sum of £26, for the maintenance of certain almshouses in the said borough. And whereas certain orders, rules, and ordinances have been heretofore, from time to time, made and resolved by the said mayor, aldermen, and burgesses of the said borough touching the holding, enjoyment, and occupation of the said lands and tenements under the said mayor, aldermen, and burgesses, and the reservation of the rents and profits of the same, under and by virtue of which orders, rules, and ordinances the said lands and tenements have heretofore been and are now held and enjoyed by certain persons (except as hereafter mentioned), in certain divisions or portions, each amounting to an acre, more or less, under the said mayor, aldermen, and burgesses. And whereas certain parts, to wit, two acres of the said lands and tenements are at this time unoccupied by any tenant or holder thereof under the said mayor, aldermen, and burgesses; and it is proper and expedient that reasonable and wholesome rules, ordinances, and regulations, and orders, should be made and established respecting the future holding and enjoying of the said parts of the said land now unoccupied; and further respecting the future holding and enjoying of all such parts as hereafter shall become vacant; and further respecting the future reservation of the rents and profits of such parts of the said lands and tenements as are now held, occupied, and enjoyed, as aforesaid, under and by virtue of the former orders,

rules, and ordinances before mentioned; therefore it is now by the said council of the said borough, so assembled as aforesaid, hereby declared, enacted, and constituted, and ordered, that the said parts of the said lands called *Coton Field*, which are now unoccupied as aforesaid, and all such parts thereof as shall become vacant, shall in future be held and enjoyed by no other persons whatever than the poor and necessitous burgesses of the said borough, by birth or servitude, duly qualified to vote for members of parliament for the said borough, or the widows of such burgesses, the said burgesses and widows being respectively resident within the said borough. And it is hereby further, by the said council so assembled as aforesaid, declared, enacted, and constituted, and ordered that no one burgess or widow of a burgess, as aforesaid, shall hereafter hold or enjoy more than one acre of the said lands now vacant, or which hereafter shall become vacant under the said mayor, aldermen, and burgesses. And it is hereby further, by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered that such lands shall be held and enjoyed at a certain rent payable therefor to the mayor, aldermen, and burgesses of the said borough, the amount thereof and days of payment to be fixed and ascertained by the council of the said borough from time to time as occasion shall require, at the reasonable discretion of the said council. And it is hereby further, by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered that for the purpose of selecting from the said poor and necessitous burgesses proper persons for the holding and enjoying the said lands under the said mayor, aldermen, and

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burgesses, two grounds of preference shall hereafter exist and be maintained, to wit, one ground of preference shall be in favour of that burgess who shall appear by the Freeman's Roll to have been a sworn burgess for the greatest space of time, and the other ground of preference shall be in favour of that burgess who, for six months previous and up to the time of selection, shall have had, and then has, the greatest number of children at home under the age of ten years; and that as often as any part of the lands aforesaid shall from time to time become vacant, the selection of a burgess for the holding and enjoying the same shall be made by turns with respect alternately to the two grounds of preference, provided that in the first instance of selection a burgess shall be selected on the ground of preference first above named. And it is further hereby provided that if at any time two or more burgesses claiming preference on the ground first above named shall appear to have been sworn as burgesses on the same day, then the said selection shall be made of such one of the said two as shall be most aged. And that if at any time two or more burgesses claiming preference on the ground secondly above mentioned, shall have happened to have had for six months previous and up to the said time of selection, and then have, the same number of children at home under the age of ten years, then the said selection shall be made of such one of the said two or more of the said last-mentioned burgesses as shall appear by the Freeman's Roll to have been a sworn burgess for the greatest space of time; and if two or more of the said last-mentioned burgesses shall appear to have been

sworn as burgesses on the same day, then the said selection shall be made of such one of the said last-mentioned two or more burgesses as shall be most aged. And it is hereby further, by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered that if any burgess shall hereafter die in the holding and enjoyment of any part of the said lands under the ordinances, regulations, and orders hereby made and established, and shall leave a widow, she, being a resident within the said borough, shall continue, from the time of the death of her said husband, to hold and enjoy the said part of the said lands, subject nevertheless to the ordinances, regulations, and orders which are or shall be hereafter in force in and for the said borough, with respect to burgesses holding any part of the said lands; as well relating to rent payable for the same, as to all other things whatsoever. And it is further hereby, by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered that no burgess shall be regarded or considered a poor and necessitous burgess within the meaning of the above ordinances, regulations, and orders, unless he shall be declared so to be by a majority of the council of the said borough assembled at a regular meeting of the said council. Provided always, that no present or future member of the council of the said borough shall be capable of holding or enjoying any part of the said lands so now vacant, or which shall become vacant as aforesaid, so long as he shall continue to be a member of the said council. And it is hereby further, by the said council, declared, enacted, constituted, and ordered, that all persons whatever, who at this present time hold or

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enjoy any part of the said lands under the said mayor, aldermen, and burgesses, shall hereafter pay an advanced rent for the same, and that the amount of the said rent and times from which the same shall begin to be payable, and at which the same shall in future be payable, shall be respectively fixed and ascertained by the council at some future or regular meeting thereof, and that each and every of such persons last mentioned, who shall refuse their consent to hold the said lands so now occupied by them respectively as aforesaid, at the advanced rent so to be paid and ascertained as aforesaid, shall be ejected from the same by due course of law. And it is hereby further, by the said council so assembled as aforesaid, declared, enacted, constituted, and ordered that so much and so many of all former orders, rules, regulations, enactments, and ordinances heretofore made and resolved by the mayor, aldermen, and burgesses of the said borough, and touching the holding, enjoyment or occupation of the said lands or tenements, or the reservation of the rents and profits thereof, as is and are inconsistent with or contrary to the declarations, enactments, constitutions, and orders hereby made, shall be, and the same is and are hereby repealed and annulled.

"JOHN MASFEN, Mayor."

6. *Joseph Abberley* obtained possession of an acre in *Coton Field* as aforesaid, under a resolution of the council and watch committee of the borough of *Stafford*, held on the 12th day of *June*, 1869.

"At a meeting of the council and watch committee of the borough of *Stafford*, held on *Monday* the 12th day of *July*, 1869, ordered and declared that *William Taylor*, who was sworn a burgess of this borough on

the 19th day of *November*, 1832, and *Joseph Abberley*, who was sworn a burgess of this borough on the 2nd day of *January*, 1835, are poor necessitous burgesses, resident within the borough, within the meaning of the by-law dated the 28th day of *February*, 1837."

"Ordered that the acre lately held by Widow *Adams* be delivered to the said *Joseph Abberley* as tenant thereof to the council, and that he do pay 5*s*. entrance money, and 5*s*. per annum as and for rent, until further notice, subject to the right of the council to get sand, gravel, and stone therefrom and under the same, pursuant to the order of the 28th day of *April*, 1836, the council paying compensation for all surface damage."

The Revising Barrister decided that the said *Joseph Abberley* had not freehold in the said land called *Coton Field*, such as would entitle him to a vote for the county, and he disallowed the claim of the same *Joseph Abberley*, and struck his name out of the said list of voters.

If the Court were of opinion that this decision was wrong, the register was to be amended by inserting the name of the said *Joseph Abberley*.

The names of above a hundred other similar claimants were also struck off, and the appeals were consolidated.

F. T. Streeten (*Gorst* with him), for the appellant. The appellant has an equitable freehold in the acre allotted to him, and does not hold it as a mere tenant at will.

[BRETT, J. Does not his interest exist so long only

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as the majority of the council choose to say that he is poor ?]

He has an interest of uncertain duration (which in itself is indicative, if not conclusive, of a freehold), and further, it is not such an interest as the council, who are the grantors, can determine arbitrarily at their caprice. The circumstance, that the estate is here determinable on certain contingencies, does not militate against its freehold nature. In character the estate is the same as if it had been created before the by-law. Before the by-law, the appointment, as regulated by the custom in existence, was for life; first for the life of the appointee, then for that of his widow, if he left one, subject to forfeiture on certain grounds, *viz.*, non-residence, and receipt of parochial relief. The by-law, though subsequent in date to the Municipal Corporations Act, is made under the common law powers of the corporation, and not under any statutory powers. No doubt the by-law empowers the council to alter the rents and times of payments from time to time, and while restraining the council from appointing themselves to an estate in the lands, it empowers them to regulate the selection of the appointees. Such machinery, however, does not affect the nature of the estates created, which, it is submitted, are the same since the by-law as they were before it. Although the council have power to alter the amount of the rents, they have no power—at all events, no general power—to put an end to the estates. It may be, they could rescind the by-law, but by doing so they would not determine estates already created, which, being vested interests in the appointees, could only be

interfered with by the provisions of an Act of Parliament. In *Co. Litt.* 42*a*, it is said that, "if a man grant an estate to a woman *dum sola fuerit*, or *durante viduitate*, or *quamdiu se bene gesserit*, or to a man and a woman during the coverture, or as long as the grantee dwell in such a house, or so long as he pay x l, &c., or until the grantee be promoted to a benefice, or for any like incertaine time, which time, as Bracton says, is *tempus indeterminatum*: in all these cases, if it be of lands or tenements, the lessee hath in judgment of law an estate for life determinable, if livery be made." And further on: "A man may have an estate for terme of life determinable at will." And in a note by Serjeant *Manning* to the case of *Davis* v. *Waddington* (*a*), a long list of authorities are cited as showing that a limitation for an indefinite period passes an estate for life, notwithstanding it be determinable at the will of the grantor. But even if that proposition cannot be maintained, the grantors here must act reasonably and properly, and cannot determine the appellant's interest at their mere caprice. The case of *Beeson* v. *Burton* (*b*), is virtually undistinguishable from the present. The provision in the by-law in favour of widows also points to an intention to create life estates. Again, looking at the terms of the order, the right of getting sand and gravel, which is reserved to the grantors, is inconsistent with the idea of a tenancy at will, though no doubt consistent with a tenancy from year to year, as well as with a life tenancy. The order being a mere direction to admit the appellant, is good for that purpose, even

(*a*) 7 *M. & G.* 45.

(*b*) 2 *Lutw.* 225; *S. C.*, 12 *C. B.* 647.

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if it goes beyond the terms of the by-law, which it cannot, it is submitted, extend or vary. He also referred to *Barton* v. *Brooks* (*a*), and *Trenfield* v. *Lowe* (*b*)

Gough appeared for the respondent, but was not called upon.

WILLES, J. I am of opinion that the decision of the Revising Barrister was correct, and that the notion that a person, situated as this appellant is, has any freehold, legal or equitable, in the land is entirely without foundation. If, looking through the somewhat meagre history of the case, I were asked to come to a conclusion on the subject, I should say that the freehold here, both legal and equitable, is in the corporation. The mode of enjoyment which since the passing of the by-law (the validity of which has not been seriously impugned) has been in existence, differs materially from that which previously existed, the class of persons to whom the corporation from time to time accord the beneficial enjoyment being a different class since the by-law. I think the freehold is vested in the corporation, and vested in it to deal with for its own purposes, as from time to time it may deem best; and that this is not one of those cases where the legal estate, though vested in the corporation, is subjected to certain equitable rights in favour of individual members of such a character as to bring the case, by virtue of 6 *Vict.* c. 18, s. 74, within 8 *Hen.* 6, c. 7. Before we can come to the conclusion that a vote for

(*a*) 2 *Lutw.* 197; *S. C.*, 11 *C. B.* 41.

(*b*) *Ante*, p. 237; *S. C.*, *L. R.*, 4 *C. P.* 454.

the county is thus conferred, it must be made out clearly that the individual member has an equitable freehold, and that his occupation is as a distinct owner, and not as a member of the corporation. Such a freehold existed in *Fryer* v. *Bodenham* (*a*), where houses in a hospital were attributed to individual members, who could not be disturbed therefrom, except for felony. That, however, is not like the present case, which rather resembles *Durant* v. *Kennett* (*b*), where the enjoyment of the knights, though separate residences were assigned to them, was held to consist merely of an occupation as members of a corporation, and for corporation purposes, and not to be that of owners or tenants. Here, no doubt, there is an enjoyment by the appellant as tenant, but not as owner of a freehold.

The foundation of the appellant's claim (passing over the custom on which he clearly cannot rely) is the order, and indirectly the by-law. The order declares the appellant to be "a poor necessitous burgess," and it is only as a poor and necessitous burgess that he is recognised as entitled to be placed in the enjoyment of the land. Evidently the occupation of it is not regarded as a benefit to the occupier, except as it is so incidentally, to the relief it affords the corporation from a charge on the rates, which points distinctly to an enjoyment by the corporation for its own purposes, as in the case of *Durant* v. *Kennett* (*b*). The order proceeds thus: "Ordered that the acre lately held by Widow *Adams* be delivered to the said *Joseph Abberley*, as tenant thereof to the council, and that he

(*a*) *Ante*, p. 204; *S. C.*, *L. R.*, 4 *C. P.* 529.

(*b*) *Ante*, p. 297; *S. C.*, *L. R.*, 5 *C. P.* 262.

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do pay 5*s.* entrance money, and 5*s.* per annum, as and for rent until further notice"—meaning, therefore, that he is to be tenant at a yearly rent until further notice. Notice might fairly and properly be given for several reasons. The corporation might become dissatisfied with the mode in which their property was disposed of—as, for instance, if the appellant received a legacy, and ceased to be poor, or if the corporation thought proper to raise the rents, and the appellant declined payment. These considerations are ample to show that nothing like a freehold interest is created by the order.

Mr. *Streeten* supported his argument by reference to a note of Serjeant *Manning* in the report of *Davis* v. *Waddington* (*a*), but notwithstanding the learning therein collected, I am of opinion that, although an interest for an uncertain period may be freehold, that it is not so where the grantor has the power to determine the estate whenever he may think proper. In *Beeson* v. *Burton* (*b*), the vote was allowed, because the interest was not determinable at the will of the grantor. Mr. *Streeten* has argued here, also, that it is not. I think, however, that it is; not, it may be, capriciously, but in accordance with the view of the corporation as to what is right and proper, having regard to the tenant's position, and the circumstances of the case. Let us look at the terms of the by-law. [His Lordship read it.] The provisions therein contained as to the selection of a poor and necessitous burgess, and the grounds of selection there enjoined, all point to the choice of an occupant to be exercised

(*a*) 1 *Lutw.* 159; *S. C.*, 7 *M. & G.* 37.

(*b*) 2 *Lutw.* 225; *S. C.*, 12 *C. B.* 647.

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by the corporation, through the council, and not to the creation of a freehold estate. So again the provision as to rent, which is clearly rent-service, and not a rent-charge. I think it is clear, from the by-law, taking all its provisions together, that it was competent for the council to come to a conclusion at any time as to who were proper persons to be the recipients of the land for occupation, it being land within their control, and to be distributed by them as charity. I think that the corporation did, with reference to this question of poverty, reserve to themselves both the selection of the tenant, and the determination of his tenancy, and they further reserved the question of altering the rent. I think the enjoyment was as tenant, under a tenancy from year to year at the utmost, and not the enjoyment of an equitable freehold. The case is not within the authorities cited in the note to *Davis* v. *Waddington* (*a*) (some of which certainly seem to go an extravagant length); and I certainly am not disposed to be the first to lay down that persons receiving the alms of a corporation, as here, are entitled to vote as freeholders for the county.

BYLES, J. I am of the same opinion. The order under which the appellant was admitted, is in the nature of his title-deed. That order did not, in my opinion, confer on him, as has been argued, an estate for life, subject to a rent-charge, defeasible on conditions subsequent; but under it he became tenant, at a yearly rent under certain conditions, one of which was the assent of the grantor to the continuance of the tenancy.

(*a*) 1 *Lutw.* 159; *S. C.*, 7 *M. & G.* 37.

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In *Trenfield* v. *Lowe* (*a*), an estate for life was expressly conferred.

BRETT, J. I am of the same opinion. If it be attempted to rely on the alleged custom, that obviously must fail. On the statements in the case, I doubt whether any legal custom is shown; but if it is, the appellant is not within it, being neither a member of the town council, nor appointed by the mayor. The attempt to rely on the by-law fails also, because if the council could make it (as to which I give no opinion), and could in making it, as they assume to do, repeal all former by-laws, they could also repeal this one. Then, if the order be relied on, the appellant is under that, at most, only a tenant from year to year, after entry and payment of rent; but I doubt whether there is more than an appointment until further notice. I certainly feel that it would be our duty to pause long before we upheld a vote created under an arrangement of this character, for it is difficult to imagine an arrangement more dangerous or liable to abuse.

Decision affirmed.

Attorneys—For Appellant, *Beddall.*
For Respondent, *Corser & Fowler, Wolverhampton.*

(*a*) *Ante*, p. 237; *S. C.*, *L. R.*, 4 *C. P.* 454.

LEE, Appellant; THE TOWN CLERK OF BRADFORD, Respondent.

Nov. 22.

The occupier of a "house" within 2 *Will.* 4, c. 45, s. 27, who would, under that section, be disqualified by non-payment of the inhabited house duty, is not the less disqualified because he occupies the ground floor as a "shop," and his qualification is so described in the list.

THE case stated,—

At a Court held at *Bradford*, in the *West Riding* of the county of *York*, for the revision of the list of voters for the borough of *Bradford*, *Thomas Barraclough Illingworth*, whose name was on the list of voters for the township of *Bradford*, in the borough of *Bradford*, was duly objected to as not being entitled to have his name retained on such list of voters. The nature of the said *T. B. Illingworth's* qualification was stated in the 3rd column of the said list to be a shop, and was described in the 4th column of the said list as being situate in *Westgate*, in *Bradford*.

The said *T. B. Illingworth* is one of four partners, who trade as linendrapers in the town of *Bradford*, under the style or firm of "*Illingworth, Son, & Co.*" For the purposes of their business, they occupy as owners, and have so occupied for 12 calendar months next previous to the last day of *July*, 1871, extensive premises in *Westgate*, in *Bradford*. These premises consist of a building, the ground-floor of which is jointly occupied by the said *T. B. Illingworth* and his partners as a shop, which is of sufficient value to give to each a vote; the upper stories of the said building are occupied as a dwelling-house, in which the servants of the said *T. B. Illingworth*, and of his partners, reside for the purpose of protecting the premises and attend-

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ing to the business concerns of the firm. There is no structural severance of the shop from the other parts of the building. The said *T. B. Illingworth* and his partners have duly paid all poor rates made in respect of these premises, but have failed to pay the inhabited house duty, to which the said premises were duly assessed. And on this ground it was contended that the name of the said *T. B. Illingworth* ought not to be retained on the list of voters.

The following instructions were issued by the commissioners of assessed taxes, acting in and for the district in which the said township of *Bradford* is situate:—

"For every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of £20, or upwards, by the year.

"Where any such dwelling-house shall be occupied by any person in trade, who shall expose to sale and sell any goods, wares, or merchandize, in any shop or warehouse, being part of the same dwelling-house, and in the front and on the ground or basement story thereof, there shall be charged for every twenty shillings of such annual value of any such dwelling-house the sum of *sixpence*.

"And where any such dwelling-house shall not be occupied and used for any such purpose, and in manner aforesaid, there shall be charged for every twenty shillings of such annual value thereof the sum of *ninepence*."

The Revising Barrister was of opinion that the

building in question having been assessed on its full annual value to inhabited house duty, at the reduced rate of sixpence in the pound, in accordance with the foregoing instructions, the *shop* was not in fact so assessed at all, and that, consequently, no assessed taxes had become payable by the said *T. B. Illingworth* in respect of the said shop within the meaning of the 2 *Will.* 4, c. 45, s. 27; and he accordingly decided against the objection, and retained the voter's name on the list.

[Twenty-five other cases were decided on the same grounds, and for the same reason all the cases were consolidated.]

The question on which the judgment of the Court was requested was, whether the Revising Barrister did or did not rightly decide that the said *T. B. Illingworth*, and the other persons whose cases were consolidated, were entitled to have their names in the list of voters for the borough of *Bradford*. If this decision were wrong, the name of the said *T. B. Illingworth*, and those of the twenty-five other persons, were to be expunged from the said list; if right, to be retained.

Crompton appeared for the appellant.

The Court, however, called upon

Cave, for the respondent, to support the decision of the Revising Barrister. The decision in favour of the vote was correct. The vote is claimed under 2 *Will.* 4, c. 45, in respect of a "shop." It is true that the shop formed part of a house, of which the upper part was occupied by the claimant through his servants, but there is nothing

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in that to prevent the claim being restricted to the lower part, which constituted, as is found by the case, a "shop" within the Act of Parliament. As to that, indeed, no objection was taken; but the objection taken was that the inhabited house-duty had not been paid. As regards that objection, also, it is submitted, the Revising Barrister was right. Shops not forming parts of houses are clearly not liable to inhabited house duty, and the course of legislation has been to exempt also shops forming parts of houses. Under 48 *Geo.* 3, c. 55, duties were payable on dwelling-houses according to the number of their windows or lights; but the 4 *Geo.* 4, c. 11, s. 1, gave relief to shops forming parts of dwelling-houses. The 14 & 15 *Vict.* c. 36, repealed those duties altogether, and section 2 of that Act imposes the new duties which are set forth in the schedule as follows:—

> "For every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of £20, or upwards, by the year.
>
> "Where any such dwelling-house shall be occupied by any person in trade who shall expose to sale and sell any goods, wares, or merchandise in any shop or warehouse, being part of the same dwelling-house, and in the front, and on the ground or basement story thereof.
>
> "And also where, &c. . . . . there shall be charged for every twenty shillings of such annual value of any such dwelling-house, the sum of sixpence.

"And where any such dwelling-house shall not be occupied and used for any such purpose, and in manner aforesaid, there shall be charged for every twenty shillings of such annual value thereof, the sum of ninepence."

Here the case finds that the reduced rate of sixpence in the pound only was assessed, and the reduction being obviously made in respect of the shop, the duty, it is submitted, is not on the shop, but the dwelling-house. Suppose the shop let off to a tenant, could the tenant be deprived of his vote for the shop, by the omission of his landlord to pay the inhabited house-duty?

WILLES, J. The Revising Barrister has decided in favour of the votes, but his decision cannot be supported. The claimant was liable to the duty assessed, and has not paid the assessment. The shop for which his name appeared on the list, formed part of the house assessed to the duty.

BYLES, J., and BRETT, J., concurred.

Decision reversed.

Attorneys—For Appellant, *Pitman & Lane*,
For Respondent, *Cave*.

JONES, Appellant; MARSHALL, Respondent.

Nov. 17 & 18.

At a Court of Revision, the Revising Barrister being of opinion that a notice of objection was bad, allowed the objector to appeal. Proceeding, however, to inquire into the validity of the votes he held them bad also, and thereupon struck them off (thus giving effect to the notice of objection), and he directed that the names should be reinstated if the Court held the notice to be bad. The objector having appealed,—*Held*, that the appeal could not be heard (the votes being struck off); that the objector was an appellant without a grievance, and the parties struck off had not appealed.

AT a Court held before the Revising Barrister for the revision of the list of voters for the city and borough of *Chester*, *David Jones* objected to the names of *Edward Farral* and certain other persons, whose names appeared in a schedule to the case, being retained in the list of voters entitled to vote in the election of members for the city and borough of *Chester*.

On behalf of the said *Edward Farral*, and the said other persons, it was objected that the notices of objection, which had been served upon them, were bad, as they did not specify the list upon which the name of the objector was to be found, in compliance with the form and direction given in schedule B, No. 11 of the "Registration Act," 6 *Vict.* c. 18.

The Revising Barrister decided that the notices of objection were bad on the ground that they did not specify the list of voters upon which the objector's name appeared, but he conducted the registration as if the said notices of objection were good and decided upon the merits of each objection, all of which he found to be good and valid, subject to the opinion of the Court of Common Pleas as to the validity of the notice.

If the Court should think the notices of objection bad, the name of the said *Edward Farral*, and the

several names comprised in the schedule, were to be reinstated on the list of voters.

The Revising Barrister declared that the appeal of the said *Edward Farral*, and of the said other persons, ought to be consolidated, and named *Frederick Marshall*, on behalf of himself and all other persons interested in such appeals, to be the respondent in this consolidated appeal, and to answer the said appeal.

Due notice of appeal was given.

"I appeal from this decision,

"*David Jones.*"

"I for myself, and on behalf of the said *Edward Farral*, and all other persons interested as respondents in this matter, and whose names appear in the schedule, hereunder written, do agree to appear and answer this appeal. "*Frederick Marshall.*"

Giffard, Q.C., appeared for the party appealing.

[WILLES, J. Mr. *Giffard*, the votes are struck off. You do not, I presume, seek to have them reinstated, and are therefore an appellant without a grievance].

James, Q.C., for the parties named respondents. The case does not state that the votes are struck off. It is, at most, only an inference from the statement that, if the Court think the notice of objection bad, the names are to be reinstated. Until the decision of the Court there is no complete striking off.

[WILLES, J. There is no section of the Act that

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speaks of a provisional striking off. That must be done finally, subject to the revision of the Court].

The decision of the Revising Barrister was, that the notices of objection were bad, and that is all that is before the Court.

[WILLES, J. I think that is not so. The final decision of the Revising Barrister, possibly against his better judgment, was to strike off the votes, and the persons struck off are the parties who should have appealed].

Per Curiam (*a*), the notice of objection having prevailed, the person who gave the notice cannot appeal; the persons struck off might have appealed, but have not done so.

Attorneys—For Appellant, *Cunliffe and Beaumont.*

For Respondent, *Milne & Co.*

(*a*) *Willes*, J., *Keating*, J., *Brett*, J., and *Collier*, J.

CULL, Appellant; AUSTIN, Respondent.

AUSTIN, Appellant; CULL, Respondent.

CULL *v.* AUSTIN (*a*).

1871.
Nov. 21.
1872.
June 3.

THE case stated,—

At a Court held on the 9th day of *October*, 1871, at *Cheltenham*, in the county of *Gloucester*, for the revision of the list of persons entitled to vote for the borough of *Cheltenham* for the ensuing year, before the Revising Barrister, appointed to revise the list of voters for the said borough, *Thomas Cull*, on the said list, duly objected to the name of *Samuel Best* being retained on the list of voters for the parish of *Cheltenham*, within the said borough. The name of the said *Samuel Best* appeared on the said list of persons so as aforesaid entitled to vote for the said borough, in respect of property within the parish of *Cheltenham* as follows:—

Name.	Place of Abode.	Nature of Qualification.	Street, &c.
Best, Samuel	*Duke Street*	House.	12, *Duke Street*

The rates which it is necessary that a proposed voter should have paid under 30 & 31 *Vict.* c. 102, s. 3, sub-sec. 4, before the 20th *July* of the qualifying year, are all rates made and allowed (*b*) after the 5th *January* of the year preceding the qualifying year, and payable up to the 5th *January* of the qualifying year.

No excusal of *such* rates (whether made *before* or *after* the commencement of the qualifying year), will be a bar to the disqualification arising from their not having in fact been paid or tendered before the 20th day of *July* in the qualifying year.

(*a*) For *Austin* v. *Cull*, see *post*, p. 744.

(*b*) See "The Poor Rate Assessment and Collection Act, 1869." 32 & 33 *Vict.* c. 41, s. 17.

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It was proved that the said *Samuel Best* was duly qualified under the "Representation of the People Act, 1867," to be retained on the said list unless he failed to be qualified for the following reason:—

On the 2nd of *February*, 1867 (*before* the passing of the "Representation of the People Act, 1867"), a poor-rate was duly made and allowed by the justices for the parish of *Cheltenham*, within the said borough, to which rate the said *Samuel Best* was duly rated in respect of the qualifying premises, and the amount of which rate did, on the making and allowance thereof, become payable from him in respect of the same premises. Yet the said *Samuel Best* had not, either before or since the 20th day of *July* last past, paid the amount of the said rate or any part thereof.

It further appeared, on inspection of the rate-book of the said 2nd of *February*, 1867, that the said *Samuel Best* had been excused, by order of the justices from the payment of the said rate; but it did not appear that the said *Samuel Best* had ever made any personal or other application to be excused.

It was also proved that the custom of the parish was for the assistant-overseer, shortly before the close of each rate, to enter in the column of the rate-book, headed "legally excused," the rate of all such persons as in his opinion were, by reason of their poverty, unable to pay the same; and the rate-book was then taken before the justices of the peace, at their next petty sessions, held at *Cheltenham*, and the said justices, on the application of the said assistant-overseer, then entered at the end of the rate-book the following minute, and duly signed the same:—

"We the undersigned, being two of her Majesty's

justices of the peace, acting in and for the county of *Gloucester*, do hereby, with the consent of the churchwardens and overseers of the poor of the parish of *Cheltenham*, order and direct that the persons whose amounts of rates appear in column 17, shall be excused from the payment of the rate.

In this way only was the said *Samuel Best* excused his said rate of the 2nd *February*, 1867.

The next following rate was made on the 25th *July*, 1867; also before the passing of the said "Representation of the People Act, 1867," and before the commencement of the first qualifying year in the said Act defined, and the said *Samuel Best* had duly paid that rate, and also all rates subsequently made in respect of the qualifying premises.

It was further proved that the said rate of the 2nd *February*, 1867, was, shortly after it became payable, duly demanded of and from the said *Samuel Best*, by a demand note duly served upon him.

The said *Samuel Best* had continuously occupied the same qualifying premises from before the said 2nd day of *February*, up to the present time.

It was contended in support of the said objection, that it having been proved that the said *Samuel Best* had not, on or before the 20th day of *July* last, paid the amount rated on him as aforesaid, by the said rate of the 2nd *February*, 1867, he had not *bonâ fide* paid an equal amount in the pound to that payable by other ordinary occupiers, in respect of all poor-rates that had become payable by him up to the 5th day of *January* last, in respect of the premises which formed his qualification, and that accordingly the said *Samuel Best* ought not to be retained in the list of occupiers

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within the parish of *Cheltenham*, entitled to vote for the said borough. But inasmuch as the said rate was so as aforesaid made and allowed before the passing of "The Representation of the People Act, 1867," under the provision of which Act the said *Samuel Best* proved his qualification to be registered as a voter, the Revising Barrister overruled the objection, and retained the name of the said *Samuel Best* on the list of such voters.

The questions for the opinion of the Court were—

1. Whether by such non-payment of the poor-rate of the 2nd *February*, 1867, as above stated, a poor-rate, which had ceased to be in force before the passing of "The Representation of the People Act, 1867," and before the commencement of the first qualifying year in the said Act defined, the said *Samuel Best* (who had proved his qualification under the provisions of the said Act), would be disqualified from being retained on the said list of voters, and—

2. If so, whether such excuse by the justices as hereinbefore described, would prevent that non-payment from operating to his disqualification?

The same facts applied also to the persons whose names were set forth in the schedule thereto annexed, and on the same grounds as that relied on as aforesaid, the Revising Barrister retained in the said list the names of such persons.

AUSTIN *v.* CULL.

AT a Court, held at *Cheltenham*, in the county of *Gloucester* on the 9th day of *October*, 1871, for

the revision of the list of persons entitled to vote for the borough of *Cheltenham* for the ensuing year before the Revising Barrister appointed to revise the list of voters for the said borough, *Thomas Cull*, on the said list, duly objected to the name of *Henry Compton* being retained on the list of voters for the parish of *Cheltenham* within the said borough.

The name of *Henry Compton* appeared on the said list of persons so as aforesaid entitled to vote for the said borough, in respect of property within the said parish of *Cheltenham*, as follows :—

Name.	Place of Abode	Nature of Qualification.	Street, &c.
Compton, Henry	*Grosvenor Cottages*	House	4, *Grosvenor Cottages*

And his qualification was duly made out, but that it was proved that, although the said *Henry Compton* had duly paid within the qualifying time all the poor rates that had become payable by him during the qualifying year in respect of the qualifying premises, that is to say, the rate of *April* 30th, 1870, and the two instalments thereof, yet he had not paid either before or since the said 20th of *July* last past, the two previous rates of the 30th *October*, 1869, and the 30th *April*, 1869, to each of which rates the said *Henry Compton* was duly rated in respect of the qualifying premises, and the amount of each of which rates had, on the making and allowance thereof respectively, become payable from him in respect of the same premises.

And it further appeared on inspection of the rate-

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books of *April*, 1869, and *October*, 1869, that the said *Henry Compton* had been excused by order of the justices from the payment of such last-mentioned rates respectively, but it did not appear that the said *Henry Compton* had ever in either case made any personal or other application to be so excused.

And it was proved that the custom of the parish was for the assistant-overseer, shortly before each rate closed, to enter in the column of the rate-book, headed "legally excused," the rates of all such persons as in his opinion were by reason of their poverty unable to pay the same, and the rate-book was thereupon taken before the justices of the peace at their next petty sessions, held at *Cheltenham*, and the said justices, on the application of the said assistant-overseer, entered at the end of the rate-book the following minute, and duly signed the same:—"We, the undersigned, being two of her Majesty's justices of the peace, acting in and for the county of *Gloucester*, do hereby, with the consent of the churchwardens and overseers of the poor of the parish of *Cheltenham*, order and direct that the persons whose amounts of rates appear in column 17 shall be excused from payment of the rate." In this way only was the said *Henry Compton* excused his said rates in *April*, 1869, and *October*, 1869.

And it was further proved that each of the said two rates of 30th *April*, 1869, and 30th *October*, 1869, was, shortly after the making and allowance thereof respectively, duly demanded by a demand note served upon the said *Henry Compton*.

And it was further proved that the said *Henry Compton* had continuously occupied the same qualify-

ing premises from before the 30th *April*, 1869, up to the present time, and that each of the three above-mentioned poor-rates was duly made and allowed by the justices for the parish of *Cheltenham*, within the said borough, on the days by which each rate is hereinbefore respectively designated.

It was contended on behalf of the objection that (it having been so proved as aforesaid, that the said *Henry Compton* had not, on or before the 20th day of *July* last, *bonâ fide* paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor-rates that had become payable by him up to the 5th day of *January* last, in respect of the premises which formed his qualification, and that in fact two of such rates as aforesaid had been wholly unpaid) the said *Henry Compton* was not entitled to be retained on the list of occupiers within the parish of *Cheltenham* entitled to vote for the said borough.

The Revising Barrister accordingly struck the name out of the list of occupiers within the parish of *Cheltenham* entitled to vote for the said borough.

The questions for the opinion of the Court were :—

1st. Whether by such non-payment of poor rates, as above stated, the said *Henry Compton* was disqualified from being registered as a voter as aforesaid, and,

2nd. If so, whether such excuse by the justices, as hereinbefore described, would prevent that non-payment from operating to his disqualification.

The same facts applied also to the persons whose names were set forth in a schedule annexed to the case, and on the same ground as that relied on as aforesaid, the Revising Barrister struck out from the

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said list the names of such persons, and as the questions for the opinion of the Court were the same, directed the appeals to be consolidated.

The Court desired that the two cases might be argued together.

Anstie for *Cull* in both cases. These cases turn upon the construction of the "Representation of the People Act, 1867," s. 3, sub-sect. 4. In the first of them the rate unpaid was made payable and excused before the passing of that Act: in the other, since that Act. Both cases come within that of *Abel* v. *Lee* (*a*).

[KEATING, J. Four years and more have elapsed since the non-payment of the rate in the first of these cases. Is it to be contended, then, that though the claimant attain to better circumstances, he is never to be allowed a vote for the same occupation, though if he changed his residence he might?]

That was urged in *Abel* v. *Lee*, and it was answered that he might tender the rate as well as change his residence. It is submitted that the excusal by the overseers is no excusal within 54 *Geo.* 3, c. 170, s. 11. "It shall be lawful for any two . . justices of the peace, acting for the county . . in which any district, parish, township, or hamlet shall be situated, in petty sessions assembled, on application made to them *by any person rated* to any rates or sesses within any such district . . to be discharged therefrom, and *proof of his or her inability* through poverty to pay such rate or sess, with the consent of the church-

(*a*) *Ante*, p. 515; *S. C., L. R.*, 6 *C. B.* 365.

wardens and overseers of such district, . . to order and direct that such person shall be excused from the payment of such rate or sess, and to strike out his or her name therefrom; and the sum at which such person was so rated in such rate or sess shall not thereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect the same."

Here the voter or "person rated" did not make application, neither was "proof of his inability through poverty to pay" given before the justices. There is, therefore, it is submitted, no valid excusal, and the overseers might still claim the rate.

[BRETT, J. May you not argue that, whether rightly or wrongly excused, the claimant was bound to pay the rate in order to vote?]

That argument is also relied on, if it should become necessary.

[BRETT, J. Might this man be distrained on?]

It is submitted that he might, as he was not duly or lawfully excused according to the statute. If there be no lawful excuse the case comes distinctly within the decision in *Abel* v. *Lee*, where indeed no question was raised as to the validity of the excusal, though it was said the excusal was too late for the purpose of the franchise. *Bovill*, C. J., there said (*a*), "Looking at these various provisions, I think the true construction of sub-section 4 is, that *all* poor rates that have become

(*a*) *Ante*, p. 522.

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payable by the occupier in respect of the premises up to the 5th of *January*, whether made within the year of occupation or not, are within its operation." *Willes*, J., said, "I concur without hesitation in my lord's opinion that the wider meaning is that which the Legislature intended should be put on the words of the 4th sub-section," &c.

[KEATING, J. Would the votes be good if the question arose under the Reform Act?]

No. Reference was made to the Reform Act in *Abel* v. *Lee*.

[KEATING, J., referred to the note to *Abel* v. *Lee*, in *Hopwood* and *Coltman's* Reports (*a*), and the quotation therefrom; *Elliott* on Qualifications, &c., 2nd Ed. p. 191.]

The view taken by the reporters is consistent with the argument for the appellant.

[KEATING, J. It goes to show that *Abel* v. *Lee* may be distinguished. You are not, indeed, bound to contend that the claimant would not, under the previous Act, have a vote, but that he has not one under the language of the later statute.]

The question appears to resolve itself into the meaning of the word "payable;" and *Abel* v. *Lee* is an authority that a rate unpaid is in fact *payable*; at all events, if as here it has not been validly excused. Rates made before the "Representation of the People Act," and unpaid, are in every sense as much "payable," under that Act, as rates made after it. The distinction drawn by the Revising

(*a*) *Ante*, p. 529, n.

Barrister, on that ground, is not well-founded. Such an argument might have had this effect, that supposing a rate made before the 15th *August*, 1867 (the date of the Royal assent to this Act), and no other rate made before the 5th of *January*, 1868, the claimant to vote might have had a vote without paying or being liable to pay any rate.

[BRETT, J. Is not sect. 7 inconsistent with the notion that sect. 3, sub-sect. 4, only applies to future rates?]

Yes, and section 8 affords similar reasoning. Even on the assumption of a legal excusal, on grounds of poverty, there was still, it is submitted, a moral obligation to pay, so that the rates might have been tendered, and in that sense they were still "payable."

Bosanquet, contra. The claimant has fulfilled the conditions under sub-sect. 4. It is admitted there is no distinction between rates made before, and rates made after, the Act. The case presents a strong instance of disfranchisement worked by the law, if the disfranchisement continues, as it is contended on the other side, without limitation of time. It might involve this absurdity that whereas those who by sudden stress in any year have been driven to the workhouse, and there received relief, would be disqualified only for that year; those who have struggled on, and only been excused their rates, would be disqualified for ever if they remained in occupation of the same premises.

As to 54 *Geo.* 3, c. 170, it must be presumed that

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everything that was done was duly done. It is stated that the customary course was followed. What was the custom would be known to all inhabitants, and any one wishing to be excused would rely upon the action of the overseers, and the notoriety of his case to obviate the necessity of his attending and applying to be discharged. There was an admission by the overseers of the inability to pay, and a consent to the discharge. No further proof would be necessary. It has been suggested by the Court that the name, not having been actually struck out, still for all purposes stands on the rate, but striking out is fulfilled by writing "excused" against the name; "striking out" is directory only.

[BRETT, J. Could not the justices excuse as to part only? And may they not have done so and intentionally abstained from striking out the name?]

If it be so, the result will be the same in the view about to be presented to the Court.

In order to the proper construction of the Act, all the sub-sections of sect. 3 must be read together. "Said" premises in sub-sect. 4, refers to premises "so occupied by him," in sub-sect. 3; and the occupation is defined in sub-sect. 2, "during the whole of the preceding twelve calendar months." The limit to "all" rates (for there must be some limit) is "during the year of occupation."

Other sections in the Act on the subject of rates sustain the view contended for.

Sect. 26 speaks of "twelve calendar months;" sect. 28, "in any year." These render it necessary to

consider twelve calendar months and no more. Sect. 28 was for the protection of all those who from ignorance or poverty might, without warning, be disqualified, and provides a form in the schedule for demand of rates; and yet the limit of the section is "any poor-rate due on 5th *January* in any year . . . . unpaid on the 1st of *June* following."

[BRETT, J. The form in the schedule demands "*all* rates, &c." and "*up* to the 5th January."]

He is, however, here excused. If he were not so, I must concede the rates would be "due."

[WILLES, J. Do you draw any distinction between "due" and payable," viz., that the rates must not only "have become payable" under sub-sect. 4, but also "due" within sect. 28?]

If there be any distinction, it is in my favour, since the rates must clearly be "due" as well as "payable." However, it is not necessary to argue that, as the excusal took place long before the qualifying year, which was not the case in *Abel* v. *Lee*.

Anstie replied.

O'Brien, Serjeant, as *amicus curiæ* suggested that the register must be taken for all purposes of past years, as existing and complete; and, therefore, any ground of objection must be shown to have accrued during the qualifying year. It surely could not be for the Revising Barrister to inquire into the events of past

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years, or the right of the voter during them to the franchise, otherwise it would result in a Revising Barrister sitting virtually on appeal from his own or his predecessor's decision.

Cur. ad. vult.

June 3rd. The judgment of the Court (*Willes*, *Keating*, and *Brett*, JJ.) was delivered by

BRETT, J. In these cases the names of the proposed voters appeared on the list of voters to be revised in *October*, 1871, as being entitled to vote for the borough of *Cheltenham*, and were duly objected to.

The qualification was admitted to be duly proved in all other respects; but it was proved that, although the voters had duly paid all the poor-rates which had become payable by them during the qualifying year in respect of the qualifying premises; yet, in the one case the voter had not paid a previous rate of *February* 1867; and, in the other case, he had not paid two previous rates of *April* and *October* of the year, 186 to each of which rates he was duly rated in respect the qualifying premises, and the amount of which rates had become payable by him in respect of such premises.

On inspection of the rate-books for 1867 and 18 it appeared that the voter in the one case had been excused by order of justices from payment of the of *February*, 1867, and the voter in the other case, in a like manner, been excused from payment of rates for 1869; but it did not appear that in either case the voter had made personal or other application to be so excused.

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It was proved that the custom of the parish was for the assistant-overseer to enter into the column of the rate-book, headed "legally excused," the rates of all such persons as in his opinion were, by reason of their poverty, unable to pay the rates; and the rate-books were then taken before the justices in petty sessions who, on the application of the assistant-overseer, entered in the rate-book a minute purporting to excuse the payment of the rates with the consent of the churchwardens and overseers. In this way the proposed voter was excused, in one case, the rate of *February*, 1867, and, in the other case the rates of 1869.

The Revising Barrister in one case retained the name on the list, and in the other struck it out.

It was contended, on the one side, that the vote ought not to be allowed; that, upon the facts stated, it appeared that there had been no legal excusal of payment in the one case of the rate of *February*, 1867, and in the other case of the rates of 1869; and, if there had, yet that the voter had not paid an equal amount in the pound to that payable by other ordinary occupiers in respect of all poor-rates which had become payable by him in respect of the qualifying premises, and, therefore, was not entitled to be registered; and that it made no difference that the rates in question were rates imposed and payable before the qualifying year, nor that they were upon these hypotheses legally excused before the qualifying year.

It was contended on the other side, that, upon the facts stated, the Court ought to assume that the excusal by the justices was accompanied by the required formalities, and was valid; that, if it was, in the one case no part of the rate of 1867, and, in the other

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case, no part of the rates of 1869, was now payable by the voter; that no part had been payable by him during the qualifying year; that, consequently, this case was to be distinguished from the case of *Abel* v. *Lee* (*a*); and that, inasmuch as the voter has paid all rates payable by him in respect of the qualifying premises during the qualifying year, his name was to be retained on the list.

The decision depends upon what is the correct construction of sect. 3 of the stat. 30 & 31 *Vict.* c. 102. The first question seems to be, what is the rule of construction to be applied.

The governing rule with regard to the construction of all statutes by a Court of Law administering the law, is, that the Court is bound to construe them as nearly as possible according to the ordinary received meaning of the words and ordinary grammatical construction of the phrases and sentences used in them. The Court ought not in any case to depart from such ordinary sense and ordinary grammatical construction, unless an interpretation according to both or either appears by the context to be contrary to the manifest intention of the Legislature. It would seem that this rule should, if possible, be more strictly adhered to with regard to the various clauses of the statute under discussion, than with regard to any other; because it must be manifest to any Court in this country that a statute dealing with the matter with which this statute deals must have been discussed and settled in almost every clause by persons having different views of the most earnest kind; and that the best way for

(*a*) *Ante*, p. 515; *S. C.*, *L. R.*, 6 *C. P.* 365.

the Court to hold a strictly even balance is, to follow, as nearly as possible, the words used in each clause of every section of the Act.

Now, by sect. 3, the first condition to be fulfilled is, occupation as an inhabitant occupier of a dwelling-house within the borough during the whole twelve calendar months preceding the 31st of *July*. The second condition is, that the proposed voter has, "during the time of such occupation," been rated in respect of the premises so occupied by him to all rates made for the relief of the poor in respect of such premises; that is to say, that he has been rated in respect of the premises so occupied by him to all poor-rates made during the twelve months preceding the 31st of *July*. The next condition is, that he has paid on or before the 20th of *July* an equal amount in the pound to that payable by other ordinary occupiers in respect of "all poor-rates that have become payable by him in respect of the said premises up to the preceding 5th of *January*."

It cannot fail to be seen that there is a grave difference in the wording of this last condition. The words confining the application of the condition to the twelve preceding months are omitted. According to the ordinary sense and grammatical construction of the phrase which describes the last condition, it is applicable, not merely to all rates that have become payable by the proposed voter during or in respect of the twelve calendar months preceding the last 31st of *July*, but to all poor-rates that have become payable by him in respect of the qualifying premises at any time preceding the last 5th day of *January*. The question is, whether there is anything in the context

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of the 3rd section, or of other parts of the statute, or of the statutes which are to be read as part of this statute, which can authorize the Court to depart from the ordinary sense and grammatical construction of the 4th sub-section as thus stated.

The other parts of this statute which refer to the point in question, are sect. 28, and the form in schedule E, referred to in that section, and sect. 29. The form of words used in sect. 28, and in the form in schedule E, so far from being inconsistent with the suggested interpretation of sect. 3, are as large as the form of words used in it. They do not in terms describe a poor-rate, or rates, payable within the preceding twelve months, but any, *i. e.*, every poor-rate due on the 5th day of *January* preceding. The list ordained to be made by sect. 29 is in terms of a still larger description: it is a list containing the name and abode of every person who shall not have paid, not merely the poor-rates payable in respect of the preceding year, but all poor-rates, and not merely those which shall have become payable from him in respect of the qualifying premises, but of any premises within the parish which he has occupied before the 5th of *January* then last past.

There is, so far, nothing in the context of the statute 30 & 31 *Vict.* c. 102, itself to modify the ordinary construction of the 3rd section of the statute. There are, however, some other provisions of the statute, which, with reference to the question now before the Court, are of great importance.

By sect. 56, "subject to the provisions of this Act, all laws, customs, and enactments now in force conferring any right to vote, or otherwise relating to the repre-

sentation," &c., "shall remain in full force, and shall apply as nearly as circumstances admit to any person hereby authorized to vote." And by sect. 59, "This Act, so far as is consistent with the tenor thereof, shall be construed as one with the enactments for the time being in force relating to the Representation of the People, and with the Registration Acts." And there is a provision relating to this statute contained in 31 & 32 *Vict.* c. 58, which must also be noticed. By sect. 30, it is enacted that "the 30th section of 2 *Will.* 4, c. 45, and the 75th section of the principal Act, *i. e.*, of 6 *Vict.* c. 18, shall apply to all occupiers of premises capable of conferring the franchise for a county under the "Representation of the People Act, 1867." The importance of these enactments is, that, by incorporating the former statutes with the present they make them part of the context of the present, and make it necessary to consider whether the larger ordinary meaning of the later statute may not after all require some modification by reason of the context thus introduced. This makes it necessary to consider whether there was in the former statutes any limitation of the number of rates which it was necessary that the proposed voter should have paid.

Now, by sect. 27 of 2 *Will.* 4, c. 45, the rates which it was necessary that the proposed voter should have paid were, "all the poor-rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th day of *April* then next preceding," *i. e.*, the 6th of *April* of the qualifying year. The wording is practically quite identical with that used in sect. 3 of the "Representation of the People Act, 1867." If, then, by the context of

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the former statutes, some modification is to be made of the words used in sect. 27, it seems fair and right to say that such context must be used to modify to the same extent the words in sect. 3 of the later Act. There is nothing in the subsequent parts of 2 *Will.* 4, c. 45, itself to indicate any modification; for, in sect. 30 the same language is used as in sect. 27. But by the "Registration Act" (6 *Vict.* c. 18), s. 11, the overseers on or before the 20th of *June* shall publish a notice "that no person will be entitled to have his name inserted in any list of voters for," &c., "unless he shall pay on or before the 20th day of *July* then next ensuing all the poor-rates and assessed taxes which shall have become payable from him in respect of such premises during the twelve calendar months next before the 6th day of *April* then last past," *i. e.*, which shall have become payable from the 6th of *April* of the year preceding the 6th of *April* of the qualifying year. That certainly would mislead, unless it be taken that the poor-rates, which it is necessary according to such notice to pay, are those which have become payable after the 6th of *April* of the year preceding the qualifying year. The inference which any one would be entitled to draw, is, that, if he pay those poor-rates which become payable on or after the 6th of *April* of the preceding year, and has been rated to the poor-rates made after the 31st of *July*, commencing the qualifying year, he will be entitled to be registered. The notice in form, schedule E of 30 & 31 *Vict.* c. 102, is only slightly different from that section. It differs by using the phrase "which have become due," instead of "which have become payable." By sect. 12, the same limitation in the same terms as to the com-

mencement of the time to be considered is made with regard to the assessed taxes.

It is necessary, in order to determine the exact position of a voter, to determine the meaning of those phrases.

Do they mean all rates and taxes which are payable or due after the 6th of *April*, though made before it; or do they mean the rates and taxes which are made, and have become due and payable after the 6th of *April*?

By sect. 35, the overseers attending the Revising Barrister shall "produce at the said Court, all rates made for the relief of the poor of their respective parishes or townships between the 6th day of *April* in the year then last past, and the last day of *July* in the then present year." This, apparently, reduces the rates which are to be brought to the notice of the Revising Barrister to those which have been made and allowed after the 6th of *April* of the year preceding the qualifying year. And, as to the question whether the proposed voter has been rated to the proper rates, inasmuch as the Revising Barrister would require to see only rates made on or after the 31st of *July* commencing the qualifying year, it seems to follow that the rates made after the preceding 6th of *April*, and before the 31st of *July*, are laid before him in order that he may see whether they have been paid.

Sect. 75 is not so direct, and yet it contains a strong intimation. It gives a description of those persons who shall not be disqualified by being misdescribed in any rate—in other words, of those persons who, but for the misdescription, would be entitled to vote.

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Those persons are described to be such as, being liable to be rated, "have been, *bonâ fide*, called upon to pay, in respect of such premises, all rates made for the relief of the poor in such parish or township during the time of such his occupation (*i. e.*, for twelve months next previous to the last day of *July*), and such person shall have *bonâ fide* paid on or before the 20th day of *July*, in such year, all sums of money which he shall have been called upon to pay as rates in respect of such premises for one year previously to the 6th day of *April* then next preceding." This, again, confines the rates which it is necessary that the proposed voter should have paid to those commencing within the 6th of *April* of the year preceding the qualifying year.

One of the dates of the 6th of *April* mentioned in all these sections—viz., the 6th of *April* of the qualifying year—has been clearly altered to the 5th of *January* by 11 & 12 *Vict.* c. 90; but the other date of the 6th of *April*—viz., that of the year preceding the qualifying year—would at first sight seem not to have been altered. The enactment is, that "no person shall be required, in order to entitle him to have his name inserted, &c., to have paid any poor-rates or assessed taxes, except such as shall have become payable from him previously to the 5th day of *January* in the same year." That would seem to alter the last-mentioned 6th of *April*, but not the former one. But by s. 28 of 31 & 32 *Vict.* c. 58, the overseers of every parish "shall produce to the Barrister appointed to revise the list of voters of any county" all rates made "between the 5th day of *January* in the year then last past, and the last day of *July*

in the then present year." This seems to imply that both the dates of the 6th of *April* are changed to the 5th of *January*.

These various sections may well be said to indicate that the large words used in s. 27 of 2 *Will.* 4, c. 45, as to the payment of bygone rates, are to be modified and limited. And after much consideration and with much hesitation, we have come to the conclusion that they do indicate that the rates which it is necessary that a proposed voter, under s. 27 must have paid, were all those which have been made and allowed after the 6th of *April* of the year preceding the qualifying year; and, since the 11 & 12 *Vict.* c. 90, after the 5th day of *January* of the year preceding the qualifying year.

If this be the true construction of s. 27 of the Reform Act, it is so by reason of the context found in the sections which have been alluded to. By s. 30 of 31 & 32 *Vict.* c. 58, the 75th sect. of 6 *Vict.* s. 18, is expressly made applicable to the £12 qualifications in counties given by s. 8 of "The Representation of the People Act, 1867." If that section as a context limits the large words used in s. 27 of the Reform Act, it may well be held to limit the same words used with regard to a similar subject-matter in the latter Act. If that be so, and if the words in s. 3 be not limited in the same manner, there will be a difference as to the payment of by-gone rates, between the new and old franchises in boroughs, and the new occupation franchises in boroughs and counties.

This incongruity can be avoided by holding that, by virtue of sect. 56 of the new Act, the sections in the older Acts which limited the large words of sect.

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27 of the Reform Act, are made a context to the new Act, by which the large words of sect. 3 are limited.

We have finally come to the conclusion that those words may not improperly be, and ought to be limited; and that *the rates which it is necessary that a proposed voter should have paid before the 20th of July of the qualifying year, are, all rates made and allowed after the 5th day of January of the year preceding the qualifying year, and payable up to the 5th day of January of the qualifying year.* As to all such rates, he must have paid them according to the terms of sub-sect. 4; that is to say, he must have paid an equal amount in the pound to that payable by other occupiers in respect of such rates. *And no excusal of such rates, whether made before or after the commencement of the qualifying year, can be pleaded in bar of a disqualification arising from their not having in fact been paid or tendered before the 20th of July of the qualifying year.*

It was argued that such a decision as that at which we have now arrived would be inconsistent with the decision in *Abel* v. *Lee* (*a*). In that case *Abel*, the appellant, claimed, in 1870, to be placed on the register, under sect. 3 of the "Representation of the People Act, 1867." It was conceded that he was duly qualified in all other respects; but it was objected that he was disqualified by reason of not having paid a rate made in respect of the qualifying premises on the 18th *June*, 1869—made, therefore, before the commencement of the qualifying year. The answer

(*a*) *Ante*, p. 515; *S. C.*, *L. R.*, 6 *C. P.* 365.

relied on to this objection was, that after *October*, 1869, that is to say, during the qualifying year, the payment of this rate was duly excused. The Revising Barrister disallowed the vote. It was argued on the appeal that the only rates which it was necessary that the proposed voter should have paid, were those made and allowed within the qualifying year, and that the excusal by magistrates, whenever made, from payment of any rate, relieved the proposed voter from the obligation, as matter of qualification, of having paid such rate. Both of these arguments were overruled by the Court, on the ground of the difference of the words used in the sub-sections of sect. 3, and on the largeness of the words used in sub-sect. 4. Inasmuch as the rate in question, *viz.*, that of *June*, 1869, was made after the 5th of *January* of the year preceding the qualifying year, the question under discussion in the present case was not raised in that case. The expressions of the judges were pointed to the argument that payment was only required of the rates made within the qualifying year. In that case it was necessary to point out the largeness of the words used in sect. 3 of the "Representation of the People Act, 1867;" in this case it has been necessary to consider how far that largeness required limitation.

Inasmuch as we hold that the only rates which it is necessary that a proposed voter should have paid are those made after the 5th of *January* of the year preceding the qualifying year, it is unnecessary to consider whether there was a valid excusal by justices in this case of the rates made in 1867 and 1869.

We are of opinion that the decisions of the Revising

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Barrister must respectively be affirmed and reversed, in accordance with this judgment.

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Attorneys—For *Cull, J. C. Selby*, for *Stroud, Cheltenham.*
For *Austin, T. W. Burr*, for *C. J. Chesshyre, Cheltenham.*

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